

An Audit of the Sheriff's Office Court Services Division

September 2006

Committee on Finance and Audit

Richard D. Nyklewicz, Jr., Chairman
Ryan P. McCue, Vice-Chairman
Elizabeth M. Coggs-Jones
Michael Mayo, Sr.
Willie Johnson, Jr.
Gerry P. Broderick
Peggy West

Milwaukee County Department of Audit

A handwritten signature in black ink, reading "Jerome J. Heer", is written over a horizontal line.

Jerome J. Heer, Director of Audits
Douglas C. Jenkins, Deputy Director of Audits

Audit Team

Jere A. Trudeau
Stanley M. Zaleski
Narcisia A. Bland

Review Team

Amos Owens

Administrative Support Team

Cathy M. Remiszewski
Cheryl A. Hosp
Karen J. Williams



Department of Audit

Milwaukee County

Jerome J. Heer
Douglas C. Jenkins

• Director of Audits
• Deputy Director of Audits

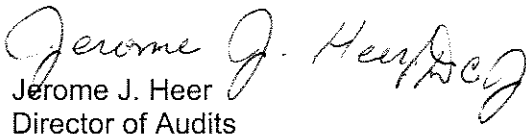
September 29, 2006

To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

We have completed an audit of the Office of the Sheriff's Court Services Division. The report is in response to a 2006 budget amendment authorizing and directing an audit of the bailiff services function provided by the Office of the Sheriff to the Combined Court Related Operations, including a review of the methodology used to allocate costs to the courts. To facilitate the review of the bailiff services function, the Department of Audit contracted with the National Center for State Courts to employ its national expertise in this area. The report highlights various conditions identified by the National Center for State Courts and its corresponding recommendations concerning court security, as well as our independent analysis, observations and recommendations.

The complete report from the National Center for State Courts is included as Appendix A. Responses from the Sheriff's Office, as well as the Chief Judge and Clerk of Circuit Court, are included as **Exhibits 2 and 3**, respectively. We wish to acknowledge the cooperation extended by the Sheriff and his staff, the Chief Judge and her staff, the Circuit Court judges and commissioners, The Clerk of Circuit Court and the staff of the Combined Court Related Operations during the audit.

Please refer this report to the Committee on Finance and Audit.


Jerome J. Heer
Director of Audits

JJH/cah

Attachment

cc: Milwaukee County Board of Supervisors
Scott Walker, Milwaukee County Executive
David Clarke, Milwaukee County Sheriff
Kitty Brennan, Chief Judge
John Barrett, Clerk of Circuit Court
Linda Seemeyer, Director, Department of Administrative Services
Steven Agostini, Fiscal and Budget Director, Department of Administrative Services
Terrence Cooley, Chief of Staff, County Board Staff
Steve Cady, Fiscal and Budget Analyst, County Board Staff
Delores Hervey, Chief Committee Clerk, County Board Staff

An Audit of the Sheriff's Office Court Services Division

Table of Contents

Summary.....	1
Background.....	4
Section 1: National Center for State Court Findings	7
Section 2: Milwaukee County Department of Audit Findings	16
Section 3: Court Security Costs	26
Exhibit 1 - Audit Scope.....	40
Exhibit 2 - Response by Sheriff's Office.....	42
Exhibit 3 - Responses by Chief Judge, First Judicial District, Milwaukee County and the Milwaukee County Clerk of Circuit Court.....	44
Exhibit 4 - Organizational Chart for First Judicial District Circuit Court.....	52
Appendix A - Report by National Center for State Court	53

Summary

The Milwaukee County Sheriff is a State constitutional officer who is statutorily responsible for law enforcement and protecting the safety and security of citizens and property throughout Milwaukee County. The function of providing security for the Milwaukee County Combined Court Related Operations (Org. Unit 2000, hereafter referred to in the report as the Court), is performed by sworn deputy sheriffs (bailiffs) who are assigned to the Court Services Division within the Sheriff's Office's Special Operations Bureau.

Budget action in 2006 reduced the number of funded bailiffs to 78, compared with 97 bailiffs in 2005. This 20% decrease in funded bailiff positions was initiated in concert with a recommendation by the County Executive to reduce court staffing by 25%. Discussion as to whether courtrooms and surrounding areas could be adequately secured with such a reduction led to a request that the Department of Audit perform an audit of the bailiff services function.

National Center for State Courts Findings

The Department of Audit contracted with the National Center for State Courts (NCSC), a recognized authority on courtroom operations, to assist us in our review of courtroom security and the staffing patterns of bailiffs. Performing this portion of our review was a consultant for NCSC who has previously worked as the Director of Security for the Massachusetts Court System, and has an extensive background in court security operations in a wide variety of court settings. The resulting NCSC report is included in its entirety as **Appendix A**.

The overall NCSC conclusion was that the current bailiff staffing level "is inadequate, and to the writer of this report, the level was determined primarily based on budgetary considerations without sufficient regard to the security and safety of the Court and those who work in or visit it. The writer believes that at the current staffing levels, it becomes a matter of not if a serious incident will occur, but only when, and that an immediate increase in bailiff staffing is therefore an absolute necessity." The numerous observations cited by the NCSC consultant supporting this conclusion are included in their entirety in Appendix A.

The NCSC report recommends a net increase of 36 bailiff positions assigned to the Court, from 78 to 114 bailiffs. Based on the cost of deputy sheriff positions calculated for the 2007 budget, the net increase of 36 bailiff positions would translate into a \$3.4 million increase in salary and fringe benefits for the Court Services Division.

Milwaukee County Department of Audit Findings

The effect of the reduced bailiff staffing levels can be noted on statistics maintained by the Court Services Division and the Court. Based on statistics over the first six months of 2006, the number of incidents occurring in the courtrooms and surrounding areas have increased. Disturbances/criminal complaints are up 82.5%, and arrests are up 12.2%. These statistics do not include incidents at the Children's Court Center, a problem that is addressed in this report.

Over the first four months of 2006, judicial officials documented 57 times when a shortage of bailiffs led to delays in court proceedings. Also, a change in the start time for bailiffs in late March resulted in another 20 incidents in March and April in which the start of court proceedings for the day was delayed. This change also exacerbated a condition in which bailiffs were not able to secure courtrooms, holding cells and other vulnerable areas by searching for weapons or similar items before the start of court each day.

The Court has 17 holding areas with 33 individual cells that are used to secure prisoners for nearby courts. Bailiffs can monitor prisoner activity inside nine of the 33 cells via closed circuit cameras either from dedicated posts or from monitors in adjoining courtrooms. However, the video feed from some cells, most notably those in the Safety Building, presented only a shadowing image of inmates, and included blind spots where prisoners could not be seen while in the cell. Further, in one of these cells the button to open the cell door was exposed, allowing anyone in the area to circumvent normal controls and open the door. Though access to this area is restricted, attorneys are allowed entry to this area to meet with their clients and could inadvertently open the cell door. Controls are in place to prevent unauthorized persons from opening the cell doors in all other cells.

The remaining 24 cells have no video feeds, including 21 that have no bailiff assigned exclusive monitoring responsibility. There are bailiffs in adjoining courts, but generally the only time prisoners in one of these cells would be physically observed would be between cases when bailiffs could be taking other prisoners between the courtroom and the holding cell, or between the holding cell and the Criminal Justice Facility. Up to an hour or more could pass before a prisoner might be seen by a bailiff, depending on the type of cases being heard in the courtroom.

Financial Issues

The Sheriff's Office cross-charges the Court for its cost of providing security for the Court. The 2006 Adopted Budget for the Sheriff's Office and the Court includes \$8.4 million for this purpose. A number of financial issues were noted with respect to the costs that were charged, including the following:

- The 2006 Adopted Budget for cross-charges to the Court included salaries for 70 bailiff positions. Eight additional deputy sheriff positions, included in the Sheriff's Office for courthouse complex security, have been assigned to the Court throughout the year. Since those eight positions were noted in the Court budget without explicit reference to this source of funding, there was some ambiguity between the 2006 Sheriff's Office and Court budgets. In addition, the Court requested that the Sheriff's Office assign three more bailiffs, for a total of 81 positions. However, the issue of how the Court would pay for the 11 additional positions was never clearly addressed. These 11 positions represent over \$1 million in salaries that were not included in the Court's budget. An appropriation transfer request of \$726,196 is currently pending.
- The methodology used countywide relating to cross-charges and abatements, such as space rental, technical support, and application charges, results in the Court not receiving abatements for costs for which it had been charged. For 2005, if the Court had received abatements totaling \$169,914 for costs these costs, tax levy support for the Courts would have decreased by the same amount, with a corresponding increase in tax levy support for the Sheriff's Office. This issue had no effect on the Court's reported year-end deficit of \$230,621 for 2005.
- Similarly, the methodology used countywide relating to budget adjustments for fringe benefit costs does not provide the desired "budget neutral" effect for departments that are cross-charged for personal services. For 2005, the Sheriff's Office received a budget increase of \$277,597 because actual fringe benefit costs exceeded the budget for bailiff services. The full actual cost was properly billed to the Court, but the corresponding increase in the budget stayed with the Sheriff's Office. This directly impacted the Court's bottom line for 2005. Had the budget adjustment for fringe benefits for bailiff services been made to the Court's budget, the year end deficit of \$230,621 would have been a surplus of \$46,976.
- Administrative costs incurred by the Sheriff's Office have not been charged to the various functions it supports, including Court security. If all costs included in the Sheriff's Administration division were allocated to the various functions performed by the Sheriff, up to \$584,700 could have been charged to the Court for the security services it provides. However, since non-administrative functions are included in this total, a detailed analysis of costs truly administrative in nature that are included in the Sheriff's Administration division would be needed to make a proper allocation. While such a charge would not affect the County's bottom line, it would more accurately show the full cost of providing bailiff services.
- The Sheriff's Office was not timely posting to Advantage the cross-charges to the Court for the costs it had been incurring in providing bailiff services, making it difficult for the Court to know where it stands in relation to its budget, or for it to evaluate Sheriff's Office charges for accuracy.

Many of these problems could have been mitigated with better communication between the Sheriff's Office and the Court. Recommendations are included to address issues raised in this report, including 10 recommendations proposed by the National Center for State Courts. Management responses from the Sheriff's Office, as well as the Chief Judge and Clerk of Circuit Court, are included as **Exhibits 2** and **3**, respectively.

Background

The Milwaukee County Sheriff is a State constitutional officer who is statutorily responsible for law enforcement and protecting the safety and security of citizens and property throughout Milwaukee County. Duties for which the Sheriff's Office is responsible include staffing the Criminal Justice Facility (CJF), patrolling Milwaukee County roads and expressways, providing security and traffic control for special events, and acting as an arm of the criminal justice system. It is also responsible for carrying out investigations, effecting arrests and warrants, detaining prisoners, providing security, serving process papers, transporting prisoners and extraditing criminals.

The function of providing security for the Milwaukee County courts is performed by sworn deputy sheriffs, referred to as bailiffs in this report, who are assigned to the Court Services Division within the Sheriff's Office's Special Operations Bureau. Bailiffs provide courtroom security and have direct personal contact with attorneys, litigants, jurors, witnesses, other peace officers, and the public. In addition, bailiffs open and adjourn courts, provide media directions, sequester witnesses and jurors, respond to medical emergencies inside and outside of the courtroom, handle people that are disruptive, and make arrests. Bailiffs are responsible for transporting prisoners between the CJF and the courts (including holding cells near the courts) for hearings, filling out paperwork related to prisoners, answering telephones, videoconferencing inmates, and conducting some DNA testing. They also are responsible for searching courtrooms, holding cells and other vulnerable areas for weapons or similar items before court begins each day.

Security coverage extends to the 47 circuit courts in Milwaukee County, as well as courts that are presided over by 22 court commissioners. **Exhibit 4** provides an organizational chart of the courts and commissioners, divided into the five court divisions (Felony, Misdemeanor/Traffic, Family, Civil, and Children's Court). The courtrooms are located at the Courthouse Complex (Courthouse, Safety Building and Criminal Justice Facility), and Children's Court Center in Wauwatosa. Administration of the courts, along with budgetary control, is under the Combined Court Related Operations (Org. Unit 2000, hereafter referred to in this report as the Court). The Court has three divisions: the County Funded State Court Services Division, consisting of the 47 circuit courts that have original jurisdiction in all civil, juvenile and criminal matters; the Family Court Commissioner Division, which conducts formal hearings in matters relating to marriage and actions affecting the family; and the Register in Probate Division, which assists the Court in adjudicating matters involving probate, guardianships of persons and estates, involuntary commitment, temporary restraining orders and

injunctions in harassment cases, and protective placements, along with associated records management.

The 2006 Adopted Budget for the Sheriff's Office includes authorization for 83 positions (78 Deputy Sheriff positions, three Sergeants, one Captain and one Clerical Assistant) plus 9,000 overtime hours to provide bailiff services. Eight of 78 deputy sheriff positions were assigned for courthouse complex security, with the cost of \$534,452 included in the Sheriff's Office budget as tax levy support. The salaries for the remaining 70 deputy sheriffs and related costs is included in the amount budgeted as cross-charges to the Court of \$8,380,753. The 2006 Court budget did not contain explicit language, as did the Sheriff's Office budget which noted that funding for the eight positions assigned to courthouse security remained in the Sheriff's Office budget, indicating that the funding was not included in the cross-charge amount. **Table 1** shows the locations where bailiffs were assigned and the corresponding number of deputy sheriff positions authorized to fill those assignments from 2002 – 2006.

Table 1
Funded Bailiff Positions
2002 – 2006

<u>Assignments:</u>	<u>No. of</u> <u>Courtrooms</u>	<u>No. of Bailiff Positions - Budget</u>					<u>Actual</u> <u>2006</u>
		<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	
<i>Felony Division:</i>							
Court	12	24	24	24	24	23	25
Commissioner – Prelim. Hearing	1	3	3	3	3	0 ^b	2
<i>Misdemeanor/Traffic Division:</i>							
Court	10	23	23	20	20	19	19
Commissioner – Criminal Intake	1	2	2	2	2	2	2
Commissioner – Out-of-Custody/Traffic ^a	1	3	3	2	2	0 ^b	1
<i>Family Division:</i>							
Court	5	8	8	8	8	7	5
Commissioners	11	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b	3
<i>Civil Division:</i>							
Court	12	2	0	2	2	0	2
Commissioners	4.5	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b
Commissioner – Probate	1	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b
<i>Children's Court Division:</i>							
Court	8	15	15	19	19	12	15
Commissioners	2.5	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b	0 ^b
Domestic Violence Oversight							
Grant Initiative		1	1	2	2	0	0
CCC Detention Center Control		4	4	0	0	0	0
Inmate Bullpens		5	5	5	5	0 ^c	0 ^c
Security (not included in budgeted cross-charge)		0	0	0	0	8	0
Jury Management		0	1	1	1	0	0
Relief Positions ^d		<u>10</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>7</u>	<u>7</u>
Total Budget Authorized Dep. Sheriff Positions^e		100	101	97	97	78	81

Note ^a – Out-of-Custody and Traffic Court were combined in 2004.

Note ^b – Coverage provided by bailiffs assigned to other courts. For Probate, staffing is via overtime.

Note ^c – Coverage provided by bailiffs assigned to Felony and Misdemeanor/Traffic Division courts.

Note ^d – Does not include 9,000 hours of overtime that has been annually budgeted.

Note ^e – The number of relief positions is a calculated number based on the total number of budgeted, authorized bailiff positions less those assigned to specific courts or posts.

Source: Adopted Budgets 2002 – 2006 and BRASS reports.

The reduction in 19 budgeted bailiff positions for 2006 represent a 13% decrease in the cost of providing bailiff services, and a 20% decrease in the number of authorized bailiff positions from the 2005 Adopted Budget. This reduction was initiated during the 2006 budget deliberations in concert with a recommendation by the County Executive to reduce court staffing by 25%. In response to concerns raised by the Chief Judge and Clerk of Circuit Court at budget hearings, the County Board directed the Department of Audit to perform an audit of the bailiff services function provided by the Sheriff's Department to the Court, including a review of the cross-charge methodology used by the Sheriff to allocate costs.

Section 1: National Center for State Court Findings

In 2006, budget action was taken to significantly decrease the number of authorized bailiff positions, from 97 to 78.

In 2006, budget action was taken to significantly decrease the number of authorized bailiff positions, from 97 to 78. This was in response to a study performed by the Department of Administrative Services (DAS) that called into question the need for 88 bailiff posts based on an analysis of courtroom activity. DAS calculated that, due to court down time, the same coverage could be performed with 19 fewer sworn deputies.

The DAS report resulted in debate as to whether the Court could be adequately secured with such a reduction in bailiffs. It was decided to implement the recommendation to reduce the number of bailiffs providing court security for 2006, and to have the Department of Audit perform an audit of the bailiff services function.

We contracted with the National Center for State Courts (NCSC), a recognized authority on courtroom operations, to assist us in our review of courtroom security and the staffing patterns of bailiffs.

Report by National Center for State Court

We contracted with the National Center for State Courts (NCSC), a recognized authority on courtroom operations, to assist us in our review of courtroom security and the staffing patterns of bailiffs. Performing this portion of our review was a consultant for NCSC who has previously worked as the Director of Security for the Massachusetts Court System, and has an extensive background in court security operations in a wide variety of court settings. The NCSC consultant's evaluation consisted of interviews with key Court and Sheriff's Office leaders and managers, walk-throughs of building, courtroom, and prisoner/detainee holding areas, and observation of security operations throughout the buildings involved.

Overall NCSC Conclusion

The NCSC report is included in its entirety as **Appendix A**. The following excerpt can be used to summarize the overall conclusions reached by the NCSC in its report:

There is no question that the current deputy sheriff-bailiff staffing level in the Milwaukee County Circuit Court is inadequate, and, to the writer of this report, the level was determined primarily based on budgetary considerations without sufficient regard to the security and safety of the Court and those who work in or visit it.

The writer believes that at the current staffing levels, it becomes a matter of not **if** a serious incident will occur, but only **when**, and that an immediate increase in bailiff staffing is therefore an absolute necessity.

The NCSC report recommends an increase of 36 bailiff positions assigned to the Court, from the current level of 78, to 114 bailiffs.

Based on these conclusions, there is no justification for implementing additional staff reductions. In fact, the report recommends a net increase of 36 bailiff positions assigned to the Court, from the current level of 78, to 114 bailiffs. Details of how this number was determined is included as **Annex A** to the NCSC report. We have prepared **Table 2** to show the locations where the NCSC consultant recommended changes in the authorized bailiff staffing levels compared to 2006 levels.

Table 2
Comparison of Budgeted Bailiff Positions for 2006
With Recommendations By NCSC Consultant

<u>Assignments:</u>	<u>No. of Courtrooms</u>	<u>Bailiff Positions</u>		
		<u>2006</u>	<u>Per NCSC</u>	<u>Diff.</u>
<i>Felony Division:</i>				
Court	12	23	30	7
Commissioner – Prelim. Hearing	1	0 ^a	3	3
<i>Misdemeanor/Traffic Division:</i>				
Court	10	19	20	1
Commissioner – Criminal Intake	1	2	3	1
Commissioner – Out-of-Custody/Traffic	1	0 ^a	1	1
<i>Family Division:</i>				
Court	5	7	8	1
Commissioners	11	0 ^a	8	8
<i>Civil Division:</i>				
Court	12	0 ^a	9	9
Commissioners	4.5	0 ^a	2	2
Commissioner – Probate	1	0 ^a	1	1
<i>Children's Court Division:</i>				
Court	8	12	16	4
Commissioners	2.5	0 ^a	2	2
Inmate Holding Areas (17 locations)		0	9	9
Prisoner Movement/High Risk Team		0	1.5	1.5
Security		8	0	(8)
Jury Management		0	0.5	0.5
Relief Positions ^c		<u>7</u>	<u>0</u>	<u>(7)</u>
Totals Authorized Bailiff Positions ^b		78	114	36

Note ^a – Bailiff coverage provided by bailiffs in other Court.

Note ^b – Does not include an additional 9,000 overtime hours that has been annually budgeted.

Note ^c – The number of relief positions is a calculated number based on the total number of budgeted, authorized bailiff positions less those assigned to specific courts or posts.

Source: 2006 Adopted Budget and NCSC consultant report.

The most significant recommended increases for bailiff positions were locations previously not specifically assigned bailiffs in 2006, such as all court commissioners except Criminal Intake (17 additional bailiffs), civil courts (nine bailiffs), and inmate holding areas (nine bailiffs). The NCSC report also recommends that the felony courts be assigned an additional seven bailiff positions. This would increase staffing from two to three bailiffs per court during jury trials and other times when additional security in the courtrooms is required. Offsetting some of these increases are decreases in Security (eight bailiffs) and relief positions (seven bailiffs). Based on the cost of deputy sheriff positions calculated for the 2007 budget, the net increase of 36

bailiff positions would translate into a \$3.4 million increase in salary and fringe benefits for the Court Services Division.

The NCSC report also noted a need to improve coordination and communication with regard to bailiff staffing between the Judicial Branch and the Sheriff's Office, including Sheriff's Deputy union leaders.

The NCSC report also noted a need to improve coordination and communication with regard to bailiff staffing between the Judicial Branch, the Sheriff's Office, and the Sheriff's Deputies' union leaders. The report concluded that relations are strained to the point wherein solutions to serious and valid concerns and problems are not adequately addressed or resolved.

Rationale for Increase in Number of Bailiff Positions

The NCSC report, provided in its entirety as **Appendix A**, provides numerous observations that are used to support its recommendation for the increase in the number of bailiff positions. The following are some of the points brought out:

- Emergency response time within the combined Courthouse and Safety buildings is increased significantly by the sheer distance to be traversed between the most distant points—a factor which must be considered in determining bailiff staffing levels.
- No bailiffs are assigned to ten civil judicial sessions. In these courtrooms, jury administration and control is a function of law clerks. The use of law clerks to safeguard and protect jurors and jury deliberations is convenient, but does not afford jurors adequate protection in the performance of their critically important court function. As the statutory language indicates, a uniformed presence deters intimidation, protects confidentiality, and gives jurors a sense of security and support for often troubling decisions.
- No bailiffs are assigned to the juror assembly area where as many as 250 people report for jury duty on Mondays and Wednesdays.
- The number of judges and commissioners, as well as court sessions has increased over the past ten years while the bailiffs staffing level has decreased. Also, court leaders state that there has been a substantial case load increase during that same time period; and that the incidence of serious crime in the area served by the circuit court has increased significantly as well.
- Judges, commissioners, district attorney employees, and bailiffs expressed significant concerns about the security

The number of judges and commissioners, as well as court sessions has increased over the past ten years while the bailiffs staffing level has decreased.

posture of the circuit court, about their personal safety, and about the safety of those who work in or visit their court buildings. None of the above believe the bailiff staffing is adequate.

Neither bailiffs nor building security guards patrol the courthouse buildings. Also there is no closed circuit television monitoring of public gathering areas inside or outside buildings.

With special focus on judicial protection, jurors and prosecutors are often overlooked in the process of addressing courthouse security concerns.

- The court building threat environment is difficult to assess because of the lack of a comprehensive, i.e., complete and systematic, incident reporting system. The reporting available nonetheless indicates a less than benign environment—consistent with the dangers associated with most large metropolitan courts. A large number of weapons and contraband is stopped/confiscated at entrance security screening stations; however, the statistics available do not account for those detected items retained by owners who place them elsewhere before being allowed to enter.
- Neither bailiffs nor building security guards patrol the courthouse buildings. Also there is no closed circuit television monitoring of public gathering areas inside or outside buildings.
- The fact that there are no serious incidents over a period of time leads to a sense of complacency which is an anathema to effective court security programs. When incidents do occur, it is common to hear words like, “We haven’t had any problems like this here.” or “We never expected anything like ‘this’ could happen.” Unfortunately, security operates in a “never know” world wherein deterrence is equally as important as prevention and control. The deterrence effect in court security programs cannot be overemphasized. In some states, it is axiomatic that for every incident which occurs, two others are prevented by the deterrence effect of a uniformed security presence. On a much grander scale, one would think that deterrence underlines the justification for the enormous expense and inconvenience of airport security programs. Has the latter prevented another 9/11? Who knows? What is known, however, is that doing what one can to deter or prevent is most important. The same can be said for court security programs. Indeed, Wisconsin statutory language is clear in this regard, “Court security officers are the first-line personnel source of security in the courtroom. Their presence serves as a deterrent to violent outbursts and provides the ability to respond to incidents that may arise.” In this respect, the open and obvious presence of uniformed officers is a solid working example of the basic court security principles designed to *deter* those intent on harm, *detect* those who have breached security, and *limit* the damage caused by the breach.
- With special focus on judicial protection, jurors and prosecutors are often overlooked in the process of addressing courthouse security concerns. Jurors and their deliberations require protection. Prosecutors can also be the

**No judge should
preside over a court
session without
security protection.**

focus of those considering or intending harm as a result of court decisions which do not go their way. There are 120 assistant district attorney—prosecutors who work in CC buildings, for example. Indeed, prosecutors are specifically mentioned in Wisconsin statutory language, “In counties having a population of 300,000 or more, (the sheriff shall) assign one deputy, to be mutually agreed upon by the sheriff and the district attorney, to the office of the district attorney.”

- No judge should preside over a court session without security protection. While he or she may preside over civil matters, each is likely to have a judicial or attorney history wherein he or she was the focus of anger on the parts of litigants, criminals, or even their own clients. Furthermore, those wanting to make a “statement” or sitting on the lunatic fringe of society may indiscriminately target a sitting judge just because he or she serves in that capacity. Furthermore, civil sessions can be quite dangerous, e.g., in landlord/tenant disputes leading to evictions, zoning decisions, and cases wherein significant personal or financial harm is alleged.

NCSC Recommendations

Following are the recommendations contained in the NCSC report. Details of the conditions noted are included in the full report (see **Appendix A**).

1. *County Circuit Court should have a minimum of 114 deputy sheriff-bailiffs (bailiffs) assigned, based on the criteria in **Annex A** to this report. (Note: the word “minimum” is emphasized since there are situations requiring more than the minimum; e.g., high visibility trials, intelligence indicating unusual threats to victims, litigants, attorneys, prosecutors, witnesses, etc.).*

The fiscal impact of increasing the bailiffs staffing level by a minimum of thirty-six (36) positions is understood, and the difficulties in doing so are not underestimated. In this light, the following managerial suggestions to facilitate the increase are offered for consideration:

2. *In keeping with the concentric circle, comprehensive approach to court security, establish a non-sworn and unarmed deputy sheriff position, the duties of which would include the operation of entrance security screening stations; jury assembly area monitoring; non-jury judicial civil sessions; patrol of court building administrative areas; monitoring, using closed circuit television, prisoner/detainee holding areas; assisting in building evacuation procedures;*

serving as security officers in non-threatening small claims sessions, etc. Individuals serving in these functions would be paid at a lesser rate than bailiffs and be given primary consideration for advancement to sworn status as vacancies occur.

3. Assign bailiffs by court division; appoint one bailiff as divisional manager to assign and reassign bailiffs intra-divisionally based on daily requirements and situations. The captain of the Special Operations Bureau would oversee divisional managers and requirements and make inter-divisional reassignments to meet unusual situations and requirements. With this in mind, the Special Operations Bureau would review bailiff assignments daily to ensure those court sessions/hearings considered of the highest risk are adequately covered in what might be referred to as a “distribution of shortages” mode. It may be that some sessions routinely assigned two or more bailiffs can function well with just one bailiff at certain times with the others assigned to more volatile sessions or hearings, even if done on a half-day basis. (Note: an impression noted during the on-site evaluation was that the number of bailiffs assigned to sessions is done in a habitual manner without sufficient regard to the risks present on a given day.) (Also, see Annex A, paragraph B 1.)
4. Rename the current “Safety Committee” the “Court Security Committee,” give its deliberations special emphasis, and ensure the committee includes, at a minimum, a judge designated by the Chief Judge; a high-level representative of the County Sheriff; a representative of the Clerk of the Circuit Court; a leader/manager in the Children’s Court Center Wauwatosa building; a County government official; a building facilities manager; and a deputy sheriff union official. The committee would continue to meet monthly to discuss security issues, including bailiff staffing, and to express mutual concerns with a view toward resolution. Consideration should also be given to the establishment of an exclusive executive level security committee consisting of the Chief Judge, the Clerk of Circuit Court, and the County Sheriff to attempt to resolve security issues that have reached an impasse status in the “Court Security Committee.” (Note: the statutory language reviewed in this evaluation indicates that “local committees equipped to address local issues of security policy are a critical element in the overall success of those efforts. Further, the creation of a committee in each county will serve one of the overall goals of these standards—to heighten awareness of and sensitivity to security issues so that the judicial system’s response to them is proactive, geared to prevention, not merely reactive, responding to violent, perhaps tragic incidents.”).

5. *The Chief Judge's office should ensure that an up-to-date judicial/commissioner schedule, including planned vacation and professional time, is provided on a monthly basis to the Office of the Sheriff so that bailiff assignments can be made more efficiently and effectively.*
6. *The Office of the Sheriff should establish a comprehensive incident reporting system as an analytical basis for determining security and staffing priorities. That system should also include statistical information on the number of weapons, and other contraband, interdicted at entrance security stations, including those weapons whose owners are permitted to retain them outside of the court buildings.*
7. *Install closed circuit television monitoring of public gathering places in the circuit court buildings, especially in the most volatile areas such as the Family Court Commissioner sessions/hearings on the seventh floor of the County Courthouse building.*
8. *Establish a deputy sheriff team to move prisoners/detainees to and from the Criminal Justice Facility thereby allowing bailiffs to focus on courtrooms, cover for unexpected absences, and perhaps reduce the need to staff court building holding areas by moving prisoners/detainees to courtrooms on a "just in time" basis as cases are called.*
9. *Conduct half-day judicial sessions as directed by the Office of the Chief Judge, especially on the civil side, which would allow bailiffs to be assigned to certain sessions in the morning and others in the afternoon (afternoon half-day sessions can be especially effective regarding bailiff utilization because courts are typically busier in the morning). In this light, preliminary hearing sessions could be held on alternate days if caseloads permit.*
10. *Stagger lunch periods for bailiffs monitoring prisoners in holding areas to maintain coverage without increasing overtime accumulation.*

Report by U.S. Marshals Service

While conducting our fieldwork we learned that a study of courtroom security had recently been completed by the Department of Justice's U.S. Marshals Service.

While conducting our fieldwork we learned that a study of courtroom security had recently been completed by the Department of Justice's U.S. Marshals Service. The reviews assess the status of security not only in the courtrooms, but surrounding areas, including courthouse access.

While the report has not been issued, we understand that it comments on many of the issues discussed in this audit. We

have been informed that it does not comment on whether or not the current number of authorized bailiff positions is adequate to secure the Court and surrounding areas. Prior to adoption of the 2007 budget, the County Board may want to consider the results of the Marshal's report.

Section 2: Milwaukee County Department of Audit Findings

Bailiffs perform a wide range of duties in their capacity of providing courtroom security.

Bailiffs perform a wide range of duties in their capacity of providing courtroom security. But first and foremost, as noted in Section 70.39(5)(a) of the Wisconsin Supreme Court Rulings (SCR) they “. . . are the first-line personnel source of security in the courtroom. Their presence serves as a deterrent to violent outbursts and provides the ability to respond to incidents that may arise. In this respect, the open and obvious presence of uniformed officers is a solid working example of the basic court security principles designed to deter those intent on harm, detect those who have breached security, and limit the damage caused by the breach.”

Section 59.27(3) of the Wisconsin State Statutes requires that the Sheriff “Attend upon the circuit court held in the sheriff’s county during its session . . . The court may by special order authorize additional deputies to attend when the court is engaged in the trial of any person charged with a crime.”

Required Level of Security

Section 59.27(3) of the Wisconsin State Statutes requires that the Sheriff “Attend upon the circuit court held in the sheriff’s county during its session . . . The court may by special order authorize additional deputies to attend when the court is engaged in the trial of any person charged with a crime.” SCR 70.39(5)(a) provides additional guidance on the matter. It states “There should be no fewer than 2 properly trained, sworn officers acting as court security officers in each courtroom and each court commissioner hearing room when criminal, divorce, child custody and other family cases are before the court or when domestic abuse, harassment and child abuse injunction hearings are taking place. The judge or court commissioner may expressly direct otherwise. The judge or court commissioner in all other types of proceedings should be able to require the assignment of a court security officer to be present at particular proceedings.”

By interpreting “attend upon the circuit court” to mean a bailiff presence is required for each circuit court, statutes require a minimum of 47 bailiffs, including the 12 civil courts. By adding to

that the guidelines for SCR 70.39(5)(a), the Sheriff's Office would be required to provide an additional bailiff for each of the 35 non-civil courts, plus two bailiffs for each of the 17 non-civil commissioner hearing rooms (34 bailiffs), for a total of a minimum of 116 bailiff posts. By applying a relief factor of 15% for those times bailiffs are not present for duty due to off time (vacations, sick, etc.), this total would increase to 133 positions. This count does not include providing at least one bailiff for the five civil court commissioners, nor does it take into consideration that all judges, including civil judges and commissioners, have the ability to request bailiff coverage as needed. Further, this total does not address the level of security deemed necessary for prisoner holding areas.

The Court has worked with the Executive Branch in the past to reach an agreement on a substantially lower number of bailiff positions to provide an acceptable level of security coverage.

Recognizing the financial implications of filling such a large number of positions at County expense, the Court has worked with the Executive Branch in the past to reach an agreement on a substantially lower number of bailiff positions to provide an acceptable level of security coverage. As noted in the **Background** section of this report, from 2002 to 2005 the number of funded bailiff positions ranged from 97 – 101.

Additional Courtroom Security Issues

In addition to interviewing management and staff from both the Court and Sheriff's Office, we randomly selected courts and observed the activities of bailiffs assigned to that court. This included civil courts which had no bailiff assigned for security. The purpose of this was to gain an understanding of the duties performed by the bailiffs and the time needed to perform them. The following sections discuss the issues that came to our attention during our review.

Effects of Fewer Bailiffs

An increase in the number of disturbances, such as fights, arrests, etc. that have occurred in the court areas might be reflective of a reduced uniformed presence in the court and

surrounding areas. The Sheriff's Court Services Division submits to the Court a monthly activity report, which it summarizes and submits to the State semi-annually. Included in this report are the number of incidents that have occurred in the courtrooms and surrounding areas. **Table 3** summarizes the incidents reported for the last three years, plus a projection for 2006 based on statistics for the first six months of 2006.

Table 3 Incident Activity Reports 2003 – 2006				
<u>Type of Incident</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Projected 2006 *</u>
Arrests	1,286	1,236	1,342	1,506
Disturbances/Criminal Complaints	184	133	103	188
Incidents Requiring Extra Security	158	200	406	422
Note * - Projection for 2006 based on statistics for the first half of the year. Source: Monthly Court Services Division Activity Reports				

Compared to 2005, arrests are projected to increase 12.2%, and disturbances/criminal complaints look to increase by 82.5%.

As **Table 3** shows, the number of incidents are tracking higher for 2006 compared to prior years. Compared to 2005, arrests are projected to increase 12.2%, and disturbances/criminal complaints look to increase by 82.5%. The number of incidents requiring additional security is keeping pace with 2005 activity (4% increase), but is over twice the number for 2004 (111% increase).

It should be noted that these statistics are incomplete, as they do not include information for the Children's Court Center. Complete information is important to help determine security trends at all court locations. As information from these activity reports is forwarded by the Court to the State Supreme Court Policy and Planning Advisory Committee, it is incumbent upon the Sheriff's Office to ensure complete data is compiled and reported. We recommend that the Sheriff's Office:

11. Compile monthly Court Services Division Activity Reports that includes complete statistical information on activity relating to the Children's Court Center.

Generally, the delays were caused when there weren't enough bailiffs in the courtroom for proceedings to continue.

The NCSC report noted that judges frequently complained about inadequate bailiff staffing that caused courtroom delays. We reviewed 57 reports prepared by judges and commissioners spanning January – April 2006 concerning incidents that occurred in their courts resulting in delays in court proceedings of up to an hour. Generally, the delays were caused when there weren't enough bailiffs in the courtroom for proceedings to continue. Examples include:

- Bailiffs left the courtroom to retrieve an inmate from CJF for a scheduled hearing. When additional bailiffs are available, they are often used as "runners" to perform this task, allowing the court to proceed with fewer delays;
- A judge required additional security during a sentencing hearing because the defendant was becoming disruptive;
- A bailiff left the courtroom to respond to an emergency call for help elsewhere in the courthouse complex; and
- A bailiff left the courtroom to attend to a prisoner in a holding cell who had passed out.

Additional delays were related to a change in the bailiff starting time intended to reduce the number of bailiff overtime hours charged to the Court.

Additional delays were related to a change in the bailiff starting time intended to reduce the number of bailiff overtime hours charged to the Court. In the past, bailiffs assembled in the Safety Building for roll call at 7:30 a.m. Time was also spent discussing any special situations that bailiffs needed to be aware of, such as a prisoner that needed extra security. Time was also spent disseminating general information to the bailiffs, including training on techniques to be used by bailiffs when handling prisoners. This start time provided enough time for such discussion, as well as for bailiffs to transport prisoners from the CJF to the court holding cells prior to the 8:30 a.m. court start time.

In late March roll call was eliminated, and bailiff start time was changed to 8:00 a.m. This change made it difficult in some

instances to transport prisoners to the court and be ready to open the courtroom doors at 8:15 a.m. [Courtrooms are opened 15 minutes before court is in session to relieve hallway congestion.] We noted 20 incidents where the court start time was delayed because bailiffs were not present to begin.

The NCSC report expressed concern over the general lack of security provided for prisoner holding cells.

Prisoner Holding Areas

The NCSC report expressed concern over the general lack of security provided for prisoner holding cells. His report contained a recommendation to increase staffing for those larger holding cells that were not dedicated to specific courts.

Table 4 provides some background regarding the number of prisoner holding areas and the related number of cells. The number of prisoners that could be in a holding area ranges from one to as many as 25, depending on the size of the cells.

Table 4 Location and Number of Prisoner Holding Cells		
<u>Location</u>	<u>No. of Holding Areas</u>	<u>No. of Holding Cells</u>
<i>Courthouse, Safety Building & CJF:</i>		
Monitored via cameras by bailiffs in adjoining Court	5	6
Monitored via camera by dedicated post	3	3
No cameras in cells, no dedicated post	6	13
<i>Children's Court:</i>		
Monitored by dedicated post, but no camera	1	3
No cameras in cells, no dedicated post	<u>2</u>	<u>8</u>
Total Holding Cells	<u>17</u>	<u>33</u>
Source: Department of Audit observations		

Our observations of the holding cells uncovered additional problems that need immediate attention. As **Table 4** shows, only nine holding cells have video cameras that are monitored by bailiffs either in an adjoining room, or at their desks in an adjoining court. Three more cells in one holding area at the Children's Court Center have a bailiff post in the immediate area

that can hear and visually observe the activity in the cells, but have no cameras in the cells. Circumstances (such as bailiff shortages elsewhere in the building) can require the assigned bailiff to be at another location, which would leave the area unmonitored.

In other areas, primarily the Safety Building, there are holding cells that have neither video cameras for monitoring nor posted bailiffs to physically observe the prisoners.

In other areas, primarily the Safety Building, there are holding cells that have neither video cameras for monitoring nor posted bailiffs to physically observe the prisoners. There are bailiffs in adjoining courts, but generally the only time prisoners in one of these cells would be physically observed would be between cases when bailiffs could be taking other prisoners between the courtroom and the holding cell, or between the holding cell and the CJF. According to bailiffs we spoke with, there are times when court is in session that they cannot monitor the holding cells for up to an hour or more, depending on the type of cases being heard.

In one of the holding cells monitored by video camera feeds to the courtrooms, the button to open the cell doors electronically was exposed, allowing anyone in the area to release the inmates.

In one of the holding cells monitored by video camera feeds to the courtrooms, the button to open the cell doors electronically was exposed, allowing anyone in the area to release the inmates. In contrast, controls were in place in all other holding areas to prevent such an occurrence. Though access to the holding area is restricted, attorneys are allowed entry to this area to meet with their clients and could inadvertently brush up against the button and open the holding cell door.

In some holding areas video-monitored by bailiffs in adjoining courtrooms, the quality of the video feed was poor, primarily in the Safety Building. The picture on some monitors presented only a shadowy image of inmates, and there were blind areas where the prisoner(s) could not be seen.

The Wisconsin Department of Corrections maintains standards on how prisoners are to be monitored. The standards require holding rooms to be located in an area that allows for continuous

Generally, the only time prisoners are subject to a visual inspection is when they are either brought from or returned to the holding area after their court appearance.

staff observation or electronic surveillance of inmates. It also requires a physical inspection of the lock-up areas at least once every 60 minutes. The standard is raised to at least every 15 minutes for inmates with special problems, such as a mental disturbance or drug or alcohol withdrawal. Bailiffs are made aware of prisoners that might pose a physical threat to others, but generally are not made aware of these types of issues that could make prisoners a threat to themselves.

Visual inspections of the holding cells are not routinely performed. Generally, the only time prisoners are subject to a visual inspection is when they are either brought from or returned to the holding area after their court appearance. For sentencing hearings, prisoners could go over an hour without a visual inspection.

Further, arrests are frequently made in the court facilities. In 2005, for example, 1,342 persons were arrested in courts located in the Courthouse and Safety buildings. These generally resulted in the person being placed in the holding cells for several hours before being taken to the CJF for booking, including a medical evaluation. Since the psychological condition of the new prisoner may not be known upon arrest, placing the prisoner in poorly or unmonitored holding cells could create problems.

Prisoners need to be kept safe from harm to themselves and others in the holding cells. To help ensure safety and comply with required standards, we recommend that the Sheriff's Office:

- 12. Install monitors, replace deficient cameras and monitors, correct the control problem with the one holding cell that could allow prisoners to escape from their holding cell.*
- 13. Establish a procedure that will inform bailiffs of special needs prisoners that require physical inspection at least every 15 minutes.*

Secure Courtrooms

According to SCR 70.39, courtrooms throughout the country have been the site of violent and tragic incidents, and their design is an important aspect in preventing such occurrences. In the American system of justice, most court proceedings are public and security concerns cannot unreasonably interfere with this principle. However, a design that ensures the proper physical arrangement of those present will create a safer setting in which citizens may exercise their right to participate in or observe public judicial proceedings.

SCR 70.39 goes on to point out that because judges are the official representatives of the judicial system, they have often been the targets of violence. For this reason, judges should be afforded special protection. A bullet-resistant barrier should be installed in every courtroom to provide a place of increased protection in the event a weapon is displayed. The separation between spectator area and the participants' area should be sufficient to prevent spectators' physical contact with attorneys, litigants and jurors and to ensure the privacy of conversations between attorneys and their clients.

The County has established barriers between the court and the public spectator areas for 14 of the 47 courts, including all 12 felony courts.

The County has recognized this principle and established barriers between the court and the public spectator areas for 14 of the 47 courts, including all 12 felony courts. We recognize the cost of installing similar barricades in all courts would be prohibitive given current budget limitations. However, construction of these barricades should be considered as part of a long term initiative for improved courtroom security.

Court Area Inspections

One of the responsibilities of bailiffs is to make sure courtrooms are secure by searching courtrooms, holding cells and other vulnerable areas for weapons or similar items before court begins each day. In our observations we did not see this function being performed consistently. Exacerbating this

problem is the change in start times for bailiffs from 7:30 a.m. to 8:00 a.m. discussed earlier in this report.

Since the commencement of the 8:00 a.m. start time, bailiffs are often unable to transport prisoners to the holding cells, perform a security sweep of the court area, and unlock the courtroom doors before 8:15 a.m. as scheduled.

Since the commencement of the 8:00 a.m. start time, bailiffs are often unable to transport prisoners to the holding cells, perform a security sweep of the court area, and unlock the courtroom doors before 8:15 a.m. as scheduled. Instead, the doors are often unlocked by deputy court clerks before the bailiffs have the opportunity to physically inspect the court area. We recommend that Sheriff's Office management:

- 14. Work with the Court to reach an agreement on a start time for bailiffs that will allow for security sweeps of courtrooms, holding cells and other vulnerable areas for weapons or items that could cause harm to the prisoners themselves or others.*

Prisoner Transport Through Hallways

Transporting prisoners through public hallways in the Courthouse and Safety Building has been a concern raised by many. According to SCR 70.39 "Secure prisoner transport and holding areas that will eliminate any public access to prisoners until they are in a courtroom where other security precautions are present are critical to the safety of the public, attorneys, court staff, judges, law enforcement personnel and the prisoners themselves."

Newer court facilities, such as the Children's Court Center, are designed and constructed with this principle in mind. However, given the limitations of the Courthouse and Safety Building, the only way to currently transport prisoners to the court holding areas is via public hallways.

An alternative could be to close off the hallways temporarily while prisoners are being moved, but doing so would disrupt the public using the hallways. Clearing hallways could also delay prisoner movement to the holding areas, leaving them to wait in

unsecured areas (elevators, stairwells, etc.) for longer periods of time, with a corresponding increase in potential escape attempts.

Section 3: Court Security Costs

The State Constitution, State Statutes and Wisconsin State Supreme Court rulings dictate the County's requirements relating to the Court.

The State Constitution, State Statutes and Wisconsin State Supreme Court rulings dictate the County's requirements relating to the Court. Specifically, they require county boards to provide suitable court rooms and offices, and require sheriffs to provide necessary deputy sheriffs as attending officers to the Court. The county board is allowed to establish the rate of compensation and the level of services to be provided to the Court, though a court may authorize additional deputies to attend when it is engaged in the trial of any person charged with a crime.

In general, the cost of operating the circuit courts, except for the salaries of judges and court reporters, are to be paid by the county. **Table 5** denotes the County's contribution toward overall Court costs from 2002 – 2006.

Table 5
Combined Court Related Operations
Total Revenues, Expenditures & Tax Levy Support
2002 – 2006

	<u>Actual 2002</u>	<u>Actual 2003</u>	<u>Actual 2004</u>	<u>Actual 2005</u>	<u>Budget 2006</u>
Total Expenditures	\$34,694,353	\$37,029,360	\$38,354,931	\$39,969,770	\$37,816,325
Total Revenues	<u>10,833,976</u>	<u>10,511,895</u>	<u>10,718,341</u>	<u>10,487,685</u>	<u>10,171,486</u>
Direct Tax Levy Support	\$23,860,377	\$26,517,465	\$27,636,590	\$29,482,085	\$27,644,839
Other Costs Not Included in Direct Tax Levy ¹	<u>7,438,527</u>	<u>7,161,746</u>	<u>6,989,916</u>	<u>6,517,645</u>	<u>6,626,704</u>
Total Tax Levy Support	\$31,298,904	\$33,679,211	\$34,626,506	\$35,999,730	\$34,271,543

Note ¹ – These costs are included in other departmental and non-departmental budgets as direct tax levy support. They are shown here to show the total tax levy support for Combined Court Related Operations.

Source: Adopted Budgets and Advantage financial records.

Included in these costs are charges incurred by the Sheriff's Office in performance of its function of providing court security. These costs are passed on to the Court through cross-charges

from the Sheriff's Office. **Table 6** lists some of the more significant cross-charged costs from 2002 to 2006, including some that have been brought into question by the Court recently. As expected, the vast majority of cross-charged costs are related to Deputy Sheriff's and their fringe benefits.

Table 6
Total Sheriff's Office Cross-Charges to the Court
2002 – 2006

	<u>Actual</u> <u>2002</u>	<u>Actual</u> <u>2003</u>	<u>Actual</u> <u>2004</u>	<u>Actual</u> <u>2005</u>	<u>Budget</u> <u>2006</u>
Total Cross-Charges to Court	\$7,979,998	\$8,629,083	\$8,787,754	\$9,426,121	\$8,380,753
<i>Most Significant Cross-charges:</i>					
Personal Services:					
Salaries	\$5,018,545	\$4,802,148	\$4,742,990	\$4,705,407	\$4,565,074
Overtime	498,882	264,763	194,973	177,656	0
Labor Transferred In	76,144	734,130	119,046	148,401	0
Labor Transferred Out	0	0	0	0	(200,000)
Fringe Benefits	1,847,639	2,120,020	2,812,334	3,403,368	3,363,577
Social Security Taxes	421,635	380,412	375,291	376,459	350,447
Other Cross-Charges:					
Technical Support	\$58,439	\$74,281	\$63,232	\$83,055	\$89,180
Fleet Management	29,605	27,733	42,162	38,633	45,382
DPW – CCC Maintenance	101,412	107,616	121,107	120,939	113,733
Administrative Services ¹	85,152	65,090	93,483	97,710	100,687
Courthouse Space Rental	70,584	66,684	64,596	60,996	67,893
Application Charges	0	15,006	10,653	25,863	31,512
Other County Services ²	33	195,694	144,376	194,841	309,881
No. of Budgeted Dep. Sheriffs	100	101	97	97	70 ³

Note ¹ – Consists of Risk Management cost reallocation to Court Services Division.

Note ² – Consists of Training Academy cost allocation to Court Services Division.

Note ³ – Does not include eight bailiff positions included in Court Services Division tax levy support.

Source: Advantage financial records, Adopted Budgets and BRASS reports, 2002 - 2006

Use of Unauthorized Bailiffs

The reduction in bailiff staff for 2006 put pressure on both the Sheriff's Office and the Court to find ways to provide all security needs within the authorized resources. One action agreed to by both units was to assign the eight positions earmarked as "Security" in the 2006 Adopted Budget to specific court divisions.

The initial plan for these eight deputy sheriffs was to position four of them in the Safety Building and four in the Courthouse, making them available to respond for police service calls at various offices in the Courthouse Complex and to respond to incidents at the various screening stations. After the reassignment, it was expected that the response to police service and screening stations calls would be done by any deputies available to break away from their court or other security assignments.

Thus, a total of 11 additional bailiff positions are being used in the Court than initially planned for in the 2006 Adopted Budget.

While these eight positions were noted in the Court budget, their source of funding were not explicitly included in the budgeted cross-charge to the Court for bailiff services. Instead, they were included in the Sheriff's Office tax levy. The Court further requested the Sheriff's Office to provide three additional bailiffs. Thus, a total of 11 additional bailiff positions are being used in the Court than initially planned for in the 2006 Adopted Budget. According to Court Services management, four deputy sheriffs were provided to the Felony Court division, three were added to the Family Court division, three were assigned to the Children's Court division, and one was assigned to the Civil Court division (for the Small Claims Court).

As these 11 positions were not included in the 2006 Adopted Budget cross-charge to the Court, the Court could end up with a year-end deficit of \$1,040,534 (offset with an expected budget surplus of an estimated \$200,000 - \$300,000 in fringe benefit costs) if savings in other areas are not realized.

As these 11 positions were not included in the 2006 Adopted Budget cross-charge to the Court, the Court could end up with a year-end deficit of \$1,040,534 if savings in other areas are not realized (based on estimates of bailiff costs for the 2007 budget). According to Sheriff's Office fiscal management, a portion of this cost (\$200,000 - \$300,00) will be offset by an expected budget surplus in fringe benefits charged to the Sheriff's Office. The Sheriff's Office had notified DAS of the issue in its quarterly fiscal monitoring reports for March 2006 and July 2006. According to the Sheriff's Office, an appropriation transfer request for \$726,196 has also been submitted for approval to address this deficit.

According to Court management, it was expected that savings attributable to bailiffs reassigned to other Sheriff's Office functions when court was either scheduled off, or it had completed the day's calendar early, would fund the additional positions. This is in addition to \$200,000 already budgeted for such savings in the 2006 Adopted Budget. Savings from not being charged for bailiff off time (vacation, sick, etc.) was also expected to help avoid a deficit.

These expectations are not likely to be met based on current practices within the Court Services Division. According to Court Services management, opportunities for charging out time to other Sheriff's Office functions during court down time are limited. In most cases, bailiffs freed up by court down time are re-deployed elsewhere in the Court to cover other shortages.

Through July 2006, the net effect on payroll for time spent by other deputies temporarily assigned to the Courts, offset by time spent by bailiffs on functions outside the Court, have totaled \$69,570.

When opportunities present themselves, bailiffs assigned to the Court have been charged to other functions outside the Court. Such instances include sending deputy sheriffs to teach at the Training Academy, serve process, work at the Traffic desk, and patrol parks. Through July 2006, the savings on payroll for time spent by bailiffs on functions outside the Court, offset by the payroll charges of other deputies temporarily assigned to the Courts, have a net savings of about \$69,570. This number may go down to some extent, since it reflects only straight time for labor temporarily transferred in to the Court, and there are times when overtime needs to be used.

According to Sheriff's Office financial management, there has been no agreement to not charge the Court for bailiff off time. Their viewpoint was that the cost of off time incurred by bailiffs, like all fringe benefits, is a cost properly allocated to the Court. We concur with this position on charging the Court for off time for the bailiff positions authorized by the budget.

As reflected in the appropriation transfer request, it appears that the Court will realize a significant deficit caused by the 11 unbudgeted deputy sheriff positions it has requested plus the remainder of the \$200,000 budgeted, but unrealized, savings from redeploying bailiffs outside the Court. We recommend that the Sheriff's Office and the Court:

15. *When making joint decisions that significantly deviate from the Adopted Budget, obtain County Board approval prior to taking the action. Include in the request the potential financial impacts of the deviation, along with possible funding options (i.e., future budget transfers, etc.).*

Certain Costs Questioned by the Court

The Court has expressed concern over a number of different cross-charged costs that it has received from the Sheriff's Office. We have discussed the issues relating to the cross-charges with financial staff from the Sheriff's Office, the Court and the Department of Administrative Services (DAS) to determine the validity of the concerns. The following subsections discusses these issues.

Cross-Charged Expenses and Associated Abatements

Cross-charges are used to properly allocate costs to operating departments that receive the benefit of the amount expended. For example, space rental costs are accumulated by Facilities Management and cross-charged to departments based on a supportable basis, such as square footage. In another type of example, Fleet Management cross-charges departments based on activity incurred, such as miles driven for a vehicle.

Abatements have the effect of 'taking back' those costs that were cross-charged to a department, but for which the department has little or no ability to manage the cost.

Abatements have the effect of 'taking back' those costs that were cross-charged to a department, but for which the department has little or no ability to manage the cost. In taking back, or abating, those costs, managers are left with only those costs over which they do maintain control. The abated costs are accumulated in other departmental budgets, or in a non-departmental budget in some cases. In the above examples, the cross-charge for space

rental is fully abated, but not the charges from Fleet Management for vehicle usage. The reason is that departments cannot manage the space rental charges it receives, but it can manage how often vehicles are used.

As noted above, abated cross-charges normally have a neutralizing 'in and out' effect on departments. The full expense is charged and then abated. This issue is discussed here because the Court states that it was cross-charged by the Sheriff's Office for three expenses in 2005 that had been fully abated from the Sheriff's Office budget. The expenses were for technical support (\$83,055), space rental (\$60,996), and application charges (\$25,863). The Court contends that it should receive the associated abatement for these expenses totaling \$169,914 so that, like all other operating departments, it is held responsible only for costs it can manage.

Tax Levy Implications

It is true the Court was cross-charged for the above amounts and did not receive the associated abatements. However, it is important to note that the Court was not budgeted to receive the abatement. Instead, the Sheriff's Office was budgeted to receive the entire abatement. This is the same practice used Countywide for budget purposes where similar circumstances exist.

If the Courts had received the abatements for the costs noted above, its total cost would not have changed, but its tax levy support would have been reduced by \$169,914, with a corresponding increase in the tax levy support for the Sheriff's Office.

This practice does not reduce or otherwise minimize the total cost of operating a department. The three expenses cross-charged by the Sheriff's Office were proper, and were reflected in the total cost of operating the Court. It does, however, affect the accuracy of net cost of operating a department, an amount that is reflected in its associated tax levy support. If the Courts had received the abatements for the costs noted above, its total costs would not have changed, but its tax levy support would have been reduced by \$169,914, with a corresponding increase in the tax levy support for the Sheriff's Office. The overall tax

levy support for the County is unchanged, but as this situation shows, there is some shifting of tax levy between departments.

Effect on Departmental Budget Deficit/Surplus

Since the abatements for the three expenses totaling \$169,914 was not budgeted for the Court, the fact that it did not receive it for 2005 (or previous years) had no effect on its bottom line surplus or deficit. Thus, the Court's year end deficit for 2005 of \$230,621 was not attributable to any of these cross-charged expenses.

Fringe Benefits Adjustment

Much like the cross-charges noted above, fringe benefits are an expense for which a budget has been established, with actual costs subsequently allocated to departments, but for which departmental managers have no control.

The budget appropriation for fringe benefits for each department is adjusted to equal actual costs once all actual costs are determined and allocated.

DAS does not abate this expense in the same manner as it does the cross-charges, but it has the same overall effect. Instead, the budget appropriation for fringe benefits for each department is adjusted to equal actual costs once all actual costs are determined and allocated. This results in a budget neutral expense item, whereby a department's deficit or surplus is not caused by increases or decreases in fringe benefit costs.

The 2005 Adopted Budget for the Sheriff's Office Court Services Division included a budget of \$3,190,733 for fringe benefits for bailiffs and other staff that was expected to be cross-charged to the Court. The Court Services Division's budget for fringe benefits was increased to \$3,468,330 to reflect actual fringe benefit costs, an increase of \$277,597.

Even though the additional fringe benefit cost was properly cross-charged to Court, the increase in the budget stayed with the Court Services Division.

Similar to the treatment of abatements previously discussed, the Sheriff's Court Services Division received the total budget increase for fringe benefits. Even though the additional fringe benefit cost was properly cross-charged to Court, the increase in

the budget stayed with the Sheriff's Court Services Division. The result was a surplus to the Sheriff's Office for \$277,597, and a deficit to the Court for the same amount. If a budget adjustment had been made to transfer the \$277,597 from the Sheriff's Office to the Court, there would have been no surplus or deficit for this expense in either budget.

According to Court and Sheriff's Office fiscal staff, an attempt was made to request a budget adjustment after year end but before the financial records were closed for 2005, but DAS declined to make the adjustment. Had the adjustment been made, the Court's year-end deficit of \$230,621 would have been a surplus of \$46,976.

While this has no effect on the County's bottom line, steps need to be taken to ensure all departments receive the same budget neutral effect when such cost items are subject to cross-charging by user departments.

However, the practice within DAS that has been consistently applied over the years has been to not allocate abatements or budget adjustments to end user departments that ultimately receive the benefit of the service provided.

However, the practice that DAS has consistently applied over the years has been to not allocate abatements or budget adjustments to end user departments that ultimately receive the benefit of the service provided. The Controller agreed that in both cases (either abating costs or adjusting expense budgets not under the control of operating departments), the benefit of the abatement or adjustment could have been passed on down to the Court, but that historically it has not been done in similar cases since it would be a difficult and time-consuming task. He cited Fleet Management, with all of its many cross-charges to user departments, as an example to show how extensive the adjustments could be if done for all departments.

If the intent is to put all departments on equal footing with regards to budget neutral cost centers, and to more accurately reflect the tax levy support for County departments, accounting procedures need to be modified. Even though it has no effect on

Even though it has no effect on the County's bottom line, the current practice distorts the bottom line for all departments transmitting or receiving cross-charges that include budget-neutral costs.

The Sheriff's Office allocated the cost of its training division as an overhead cost to its operating divisions based on the number of authorized sworn positions for each division.

the County's bottom line, the current practice distorts the bottom line for all departments transmitting or receiving cross-charges that include budget-neutral costs. This issue needs to be addressed in a comprehensive manner County-wide to ensure that the budget-neutral objective is met.

Administrative Services Cross-Charge

As previously noted, cross-charges are important for properly allocating all the costs of performing a service or function. This includes not only direct costs, such as the salary of the bailiffs, but also administrative overhead costs.

In 2005, the Sheriff's Office charged the Court \$97,710 in an administrative services account (No. 9751). This consisted of actual costs for insurance claims, worker's compensation claims, and other related costs paid by DAS's Risk Management Division on behalf of persons assigned to the Court Services Division. This is an appropriate charge to the Court. However, according to Court fiscal staff, it was not clear what the costs represented.

Training Academy Cross-Charge

The Sheriff's Office allocated the cost of its training division as an overhead cost to its operating divisions based on the number of authorized sworn positions for each division. This resulted in an allocation of \$194,841 to the Court Services Division in 2005, which was passed on to the Court. According to Court fiscal staff, the methodology used to compute the allocation was flawed. We disagree. While other allocation methods could be used to allocate this cost, the method that was used is equally reasonable as the one suggested by the Court. This issue is one that needs to be openly discussed between the two parties prior to the budget year, rather than questioning the methodology during the year.

Administrative Services Not Cross-charged

The Sheriff incurs other administrative costs that are not charged out. In particular is the Sheriff's Office Administration (org unit 4002), that includes over \$5.2 million, in costs relating to departmental administration, along with some operational functions such as process billing and cash collection operations. It includes the salaries for several high level departmental managers, including the Sheriff, as well as fiscal staff responsible for accounting for all divisions, including the Court Service Division.

A reasonable, supportable allocation method would result in substantial charges that could be properly charged to the Court for its share of the Sheriff's administrative support.

A reasonable, supportable allocation method would result in substantial charges that could be properly charged to the Court for its share of the Sheriff's administrative support. Using the same allocation percentages used by the Sheriff's Office for allocating insurance costs to each division, up to \$584,700 of the \$5.2 million would be allocated to the Court. The actual amount of the allocation would likely be considerably less, pending the results of a more detailed analysis of the \$5.2 million to determine more accurately which costs are truly administrative in nature, and thus be the basis for the allocation. For discussion purposes, however, this analysis shows that a significant amount could be allocated to the Court but has not been.

Charging out all appropriate Sheriff's Office overhead costs to each division, and subsequently charging the Court for its share, would have no overall fiscal effect on the County. However, such an allocation would more accurately show the full cost of providing bailiff services as well as the overall County support for the Court.

Need to Improve Communication

The NCSC report noted a need to improve coordination and communication between the Sheriff's Office and the Court on operational issues with regard to bailiff staffing. The same holds true with regard to financial management issues to ensure that

budget objectives are met, and if they are not met, that problems can be timely brought to the attention of the County Board so that corrective action can be authorized.

Discussion with financial management from both the Sheriff's Office and the Court disclosed several issues that would indicate a need to improve ongoing dialogue between the two units. For example:

- The Court was not provided with details of the charges that were assessed by the Sheriff's Office which would allow it the ability to verify the accuracy of billed amounts. This includes payroll information, information on vehicles used to transport inmates from the CJF to the Children's Court Center, and other charges that the Sheriff's Office incurs on behalf of the Court.
- Costs were not timely posted to the Advantage financial system so that the Court can assess how it stands in relation to its budget. According to Sheriff's Office financial management, this problem existed earlier in the year but steps have been taken to post charges monthly.
- Costs for Sheriff's Office administration were billed with no explanation as to what they represent.
- Methodologies for allocating some overhead costs were not discussed prior to being assessed.

In prior budget years, there had been some communication between the Court and the Sheriff's Office in developing a budget for bailiff services. These discussions were limited in scope, primarily dealing with the number of bailiff positions for which the Sheriff's Office would provide and charge the Court.

This type of discussion did not take place for the 2006 Adopted Budget. However, the level of communication needs to extend further than merely a discussion of the number of bailiff positions for which to budget. It is apparent that the resolution of some fiscal issues, such as abatements for cross-charges, must take place within DAS. But discussion of other issues, such as those

However, the level of communication needs to extend further than merely a discussion of the number of bailiff positions for which to budget.

points noted above, needs to take place both before and during the fiscal year.

Section 4.06(5)(b) of the County's Administrative Manual provides direction on how to establish cross-charge amounts. It suggests that an agreement be reached up front on the amount of service provided, such as the number of hours to be assigned for bailiffs. It encourages an "arm's length" negotiation, which would indicate that both parties should at least minimally acknowledge what is to be charged. This requirement should extend to all other costs for which the Court has had questions in the past. If there are instances where the agreement cannot be reached, assistance from DAS could be requested to arbitrate the issue.

Formal acknowledgement in the form of a service level agreement should be put in writing to avoid questions down the road. We recommend that the Sheriff's Office:

- 16. Work with the Clerk of Circuit Court to annually prepare a service level agreement that defines those costs that are to be cross-charged to the Court by the Sheriff's Office. The agreement should provide detail on such issues as the number of positions to be charged, the treatment of off-time incurred by those positions, the methodology used to compute specific costs (such as training academy costs), the type of documentation to be provided to the Court to support Sheriff's Office charges, and the timelines for providing agree-upon support.*

Survey of Other Jurisdictions

According to the Court, Milwaukee County is the only Wisconsin county in which the Sheriff's Office cross-charges the Court for bailiff services. In a limited survey we confirmed with officials from Dane County that the Sheriff's Office does not cross-charge the Court for the bailiffs it provides.

We also contacted officials from larger counties outside Wisconsin (Hennepin County (Minneapolis), MN; Jackson

A limited survey of jurisdictions both in and outside Wisconsin indicated that the cost of court security was cross-charged to their courts.

County (Kansas City), MO; and Du Page County, IL) to determine how court security costs are handled. None of the jurisdictions indicated that the cost of court security was cross-charged to their courts.

Of interest was the fact that Illinois state law authorizes Cook County to impose a court security fee dedicated to defraying court security expenses incurred by the Sheriff. The fee of \$25 is assessed in criminal, local ordinance, county ordinance, major traffic, criminal domestic violence and conservation cases against the defendant upon entering a plea of guilty or if found guilty. Exceptions are made in cases in which fines are paid without a court appearance.

Recognizing the total cost of performing a function or task requires that all related costs be applied, including overhead. This provides policy makers with the knowledge needed to make both short- and long-term decisions on whether to continue, expand, or discontinue certain functions, tasks, or even entire operations.

In the case of court operations, identifying court security costs provides information on the total cost of performing this mandated function. While cross-charging can be used to capture all related costs, it can be quite complex and as the issues in this section reflect, can cause other problems that are not subject to simple fixes. Accounting information could be used to compute total court costs without the need for cross-charge transactions.

While cross-charging can be used to capture all related costs, it can be quite complex and can cause other problems that are not subject to simple fixes.

The pros and cons of cross-charging need to be weighed before making wholesale changes to the manner in which costs are currently accounted for. Regardless of how total costs are accumulated, it is important that there be a means for doing so in the event that more comprehensive funding were provided by the

State to pay for the total cost of operating Milwaukee County courts.

Audit Scope

The objective of this audit was to review the efficiency of the Milwaukee County Sheriff's Office Court Services Division, with particular emphasis on its ability to provide adequate security for the courts given current staffing levels. To assist us in our review of courtroom security and staffing patterns of bailiffs, we contracted with the National Center for State Courts, a recognized authority on courtroom operations.

The audit was conducted under standards set forth in the United States Government Accountability Office *Government Auditing Standards (2003 Revision)*, with the exception of the standard related to periodic peer review. Limited resources have resulted in a temporary postponement of the Milwaukee County Department of Audit's procurement of a peer review within the required three-year cycle. However, because the department's internal policies and procedures are established in accordance with Government Auditing Standards, and because this audit was performed in compliance with those policies and procedures, the absence of a peer review did not affect the results of this audit.

We limited our review to the areas specified in this Scope Section. During the course of the audit, we:

- Reviewed County Board files and reports concerning the reduction in bailiffs.
- Reviewed Adopted County budgets detailing the financial budget and funded full-time equivalent positions for the Court Services Division and also for history of the unit.
- Researched state statutes and local ordinances applicable to the circuit court and the Sheriff's responsibilities for providing bailiff services.
- Reviewed prior audits and reports concerning Milwaukee County courts and also other audits performed by other audit departments.
- Observed and toured court operations at Milwaukee County Courthouse, Safety Building, and Children's Court Center; including holding cells.
- Observed and interviewed 20 bailiffs performing their daily activities, in addition to interviewing nine judges during our observations.
- Reviewed bailiff daily scheduling sheets of the Court Services Division for a three-year period from 2004 – 2006, in addition to reviewing timesheets for randomly selected pay periods in 2006.

- Reviewed Court Services Division Activity Reports related to safety and security in court facilities from 2002 – 2006.
- Interviewed operational and financial management and staff in the Sheriff's Office, Combined Court Related Operations, and Clerk of Circuit Court.
- Interviewed each presiding judge of the five court divisions (Felony, Misdemeanor/Traffic, Civil, Family and Children's), the Deputy District Attorney, Court Commissioners, and officials of the Deputy Sheriffs' Association union.
- Analyzed financial data from Advantage, including actual revenues and expenditures, earned and incurred by the Court and Sheriff's Office.
- Obtained and analyzed statistics on the number of incidents reported by Court judicial officials.

**MILWAUKEE COUNTY
OFFICE OF THE SHERIFF**
Inter-Office Communication

TO: Jerome J. Heer
Director of Audits

FROM: Inspector Kevin A. Carr

DATE: September 19, 2006

SUBJECT: Audit of Sheriff's Office
Court Services Division
September 2006




The following numbered responses correspond to the numbered recommendation in the audit report:

1. The 2006 actual staffing level of 81 bailiffs was the result of a negotiated agreement between the Courts and the Sheriff's Office. The Sheriff's Office will continue to provide the number of deputy sheriff bailiffs requested by the Courts and funded by the County Board in accordance with Wisconsin State Statutes.
2. The Sheriff's Office does not oppose studying the creation of a non-sworn bailiff position to supplement the Deputy Sheriff positions currently serving as bailiffs.
3. The Sheriff's Office disagrees with the appointment of a deputy sheriff bailiff as divisional manager to assign and reassign bailiffs. The existing Deputy Sheriff Captain and the three Deputy Sheriff Sergeant positions are responsible for the assignment and reassignment of deputy sheriff bailiffs each day. The consultant's observation that bailiffs are assigned in a routine manner without regard to risks present on a given day is false. Bailiff assignments change on a daily basis based on the court calendar and an assessment of risk related to the scheduled court case.
4. Court security issues are currently discussed with the judges at regular meetings of the judiciary and any other time the judge's desire.
5. The Courts currently provide this information to the Sheriff's Office Court's Division.
6. The security checkpoints are under the direction of Facilities Management not the Sheriff. The amount of contraband detected at the security checkpoints does not have a direct bearing on bailiff staffing levels and activity.
7. The Sheriff's Office does not oppose the installation of closed circuit television monitors to improve courthouse security but does not have staff available to monitor the cameras or respond to what is seen.
8. The Sheriff's Office is willing to discuss the judges concerns regarding inmate

movement and courtroom security. However, the establishment of a prisoner/detainee movement team would not be cost effective or efficient. Multiple courts need their in-custody defendants at the same time. Therefore, each bailiff assigned to a court transfers the in-custody defendant from court staging in the Criminal Justice Facility. The alternative would be one transport team moving inmates from court staging to a courtroom and returning for the next inmate while the courts wait or multiple inmate movement teams on overtime delivering inmates to court at the same time to avoid court downtime.

9. The scheduling of court cases is up to the judges. However, the high caseloads in Milwaukee County are not conducive to this type of scheduling.
10. Multiple deputies are not paid overtime during lunch periods to monitor the same prisoners in holding cells.
11. The Sheriff's Office agrees that activity reports should include Children's Court Center.
12. The request to install and replace cameras and monitors and the correction of the control problem with the holding cell will be forwarded to Facilities Management.
13. Bailiffs will be informed of special needs inmates that require increased physical observation.
14. The Sheriff's Office will discuss bailiff start times and court start times in order to allow for security sweeps of courtrooms, holding cells and adjacent areas.
15. The 2006 bailiff staffing level was developed after the budget was adopted during negotiations between the Courts and the Sheriff's Office in December 2005. The resulting staffing level was presented to the Department of Administration, the County Executive and the County Board Finance Committee. The projected cross charge for bailiff services is included in the quarterly fiscal monitoring reports that were submitted in April and July. In addition, an appropriation transfer request relating to bailiff services was submitted to the Department of Administrative Services in August.
16. The cross charges for bailiff services is the result of the level of service (number of deputies and overtime hours) requested by the Courts. The cost of providing that service is not the subject of negotiation. The methodology used to compute the cost is also not subject to negotiation. The calculation of the bailiff cross charge should not be treated differently than any other cross charge in the County. No department that cross-charges the Sheriff's Office is required to obtain approval of the method used in calculating the cross charge amount.


Inspector Kevin Carr
Milwaukee County Sheriff's Office

Dac.kac,sn

The Chief Judge's Response
To The Milwaukee County Audit
of the Sheriff's Office Court Services Division

to

Milwaukee County Board of Supervisors

Committee on Finance and Audit

Richard D. Nyklewicz, Jr., Chairman

Ryan P. McCue, Vice-Chairman

Elizabeth M. Coggs-Jones

Michael Mayo, Sr.

Willie Johnson, Jr.

Gerry P. Broderick

Peggy West

And

Milwaukee County Department of Audit

Jerome J. Heer, Director of Audits

Douglas C. Jenkins, Deputy Director of Audits

James D. Felde, CPA, CFE

Prepared by
Hon. Kitty K. Brennan
Chief Judge, District 1
September 28, 2006

Chief Judge's Response

Bailiff Staffing

The Milwaukee County Audit on Sheriff's Office Court Services Division presents unmistakable evidence that the bailiff staffing levels in the Milwaukee County Courts and buildings are dangerously low. The public's safety is at risk. The National Center for State Courts (NCSC) expert reports in the audit that current bailiff staffing creates unreasonable risk to everyone in the courts and halls. In the words of the national expert hired by the County auditors:

“...it becomes a matter of not if a serious incident will occur, but only when.

For the safety of the public, the staff, the jurors, the judges, the prisoners, the litigants, the witnesses, bailiff staffing levels have to be increased immediately.

The NCSC expert made three findings:

- 1) The bailiff staffing level in the Milwaukee County Circuit Court is inadequate and places everyone in the court and building at significant risk.
- 2) The County budgetary decision to reduce staffing by 19 positions did not sufficiently consider valid court security concerns.
- 3) Communications and coordination with regard to staffing are strained to the point that solutions are not adequately addressed.

The NCSC report makes 10 recommendations which the Chief Judge's office fully agrees with. **The chief recommendation is that the Milwaukee Courts should have a minimum of 114 deputy sheriff-bailiffs.** The expert attaches an Appendix A that details how those 114 should be assigned. We had 97 bailiffs for 2005. The County cut it to 78 bailiffs for the 2006 budget. And the County Executive has proposed 70 for 2007.

The County Auditors, while not suggesting a correct staffing number, make several telling observations of the dangers in the courts due to the low staffing level. The County Auditors note that in the first four months of 2006, **Disturbances and Disorderly Conducts rose 82.5% and arrests are up 12.2% over last year.** The sharp rise in disturbances in the courts coincides exactly with the County's 20% cut in bailiff staffing.

In 2005 there were 97 bailiffs in the budget and in 2006 the County cut the bailiffs staffing from 97 to 78. Why was the bailiff staffing cut 20%? As pointed out by the national expert retained by the County Auditors:

“...the level was determined primarily based on budgetary considerations without sufficient regard to the security and safety of the Court and those who work in or visit it.”

As the NCSC expert rhetorically asks, what price do you put on a person’s safety?

We lost the deterrent effect of a strong presence of bailiff deputies in the courthouse when the bailiffs were reduced. These increased disturbances endanger many members of the public. There are jurors, county employees, judges, witnesses, attorneys, families and friends of litigants, brides and grooms and their families coming to the courthouse for their wedding, prisoners, small claims litigants, people coming to get birth certificates, pay their taxes or see their County Supervisor. Homicides and serious injuries have occurred in our courts and halls before, jurors have been threatened before. It is not a stretch to say that the current low staffing levels create a risk of serious harm to the public.

The County Auditors found that many of the holding cells throughout the courts are not safely staffed. Prisoners are left alone in the cells for more than an hour without supervision. Suicides or fights between prisoners could break out and there are no deputies there to control them. In many of the holding cells there are no video cameras monitoring the prisoners. In one case the County Auditors found a door release button exposed where anyone walking by, lawyers, staff, anyone, could press it and allow the prisoner to escape. Additionally the County Auditors also observed security risks from the transport of prisoners through the halls and a need for construction of barricades for the protection of the judges in staff in the courtrooms that do not now have them.

In all of the observations of the County auditors and the NCSC expert it is apparent that the low bailiff staffing levels create an opportunity for prisoner injury or escape which in turn jeopardizes the safety of everyone in the courtroom and building.

The County Auditors make 4 recommendations which the Combined Courts agrees with:

- 1) That the Sheriff do comprehensive incident reports, including the Children’s Court Center to better monitor staffing needs and security issues.**
- 2) That the Sheriff’s Department and County install television monitors in the holding cells, repair existing ones and correct the button control problem that would allow a prisoner to escape.**
- 3) Establish a procedure that will inform bailiffs of special needs prisoners that require physical inspection at least every 15 minutes.**
- 4) The Courts and Sheriff’s Department rework bailiff start time to allow for a careful security sweep of courtrooms, holding cells and other vulnerable areas for weapons or items that could harm the prisoners themselves or others.**

The County auditors should be credited for their fair and thorough report. But now the County Board will have to take the necessary steps to bring those bailiff staffing levels up to responsible levels. As difficult as it may be to fund proper bailiff staffing levels, it must be done. Not only is there a human safety cost to the low levels, there's a potential financial cost as well. The audit puts the County officials on notice of the safety risks to the public. In the event someone does get hurt, the audit will confirm that the County had been warned and did nothing about the risks to safety. The County leadership has no choice but to increase staffing significantly to at least the former levels, if not to the full recommendations in the audit.

Safety isn't the only bailiff staffing level concern. Efficiency is suffering from the low bailiff staffing levels also. In the first four months of 2006, judicial officials documented 57 times when a bailiff shortage led to delays in court proceedings. They note an additional 20 due to a change in bailiff morning start time during that same period. These delays are costly to the taxpayers. Adjournments due to delays create additional costs such as the cost of a second court appearance and in the case of an in-custody defendant, the cost of a daily jail bed.

Bailiff Cross-Charging

As to the cross-charging system currently in place, it is confusing, divisive and unfair. The auditors have pointed out that most of the cross-charging is tax levy neutral. The net effect of the cross-charging is to shift the costs from one org unit's budget to another. All that does is negatively impact the ability of the two units to work together for the common good. Hours of time are wasted arguing about cross-charges. The accounting mechanism in the county is cumbersome and sometimes the Courts don't receive notice of the cross-charge until months after the Sheriff's Department has filed the charge. The documentation of charges is lacking. The Courts cannot plan meaningfully. It is counter-productive to sound management practices to not know your expenditures until 6 months after the fact and then to get inadequate documentation of the charges.

In the final analysis the Wisconsin Statutes and case law make it clear that only the judges have the authority to determine the bailiff staffing levels that are necessary to public safety and the smooth operation of the courts. One way or another, those bailiffs have to be paid for by the County. It ultimately doesn't matter whether the bailiffs' charges are in the Sheriff's budget or the Courts.

The whole process of pitting the Sheriff's Department and the Courts against each other to fight about abatements and Training Academy charges and Fleet Services, etc., is counter-productive and meaningless. It has contributed significantly to the poor cooperation and communication between these two entities as pointed out by the auditors. For example, the approved County budget for the Sheriff's Department and the

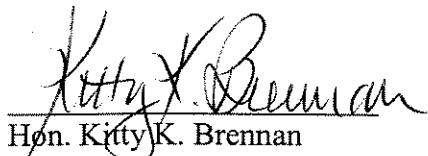
approved County budget for the Courts say two contradictory things about the 2006 bailiff staffing level. The Sheriff's Adopted budget says there will be 70 bailiffs budgeted for the Courts and 8 more that are in the Sheriff's Budget. The Courts Adopted budget says there are 78 budgeted bailiffs for the court and says nothing about those 8 being in the Sheriff's budget. This lack of clarity by the County has resulted in extensive disagreements over the appropriate cross-charges for the disputed 8 bailiffs. The disagreement has involved the Comptroller, DAS and the auditors. Much time and bad relations have been sacrificed in just this one cross-charging battle.

The solution for the cross-charging problem is for the County to place the funding for bailiffs in a non-departmental fund. The Courts and the Sheriff's Department should then sit down and work out the staffing levels and charges as recommended by the auditors in their suggestion of a memorandum of understanding of staffing and costs.

Conclusion

We in the Combined Courts will continue to work with all County officials including the Sheriff to find economies and reasonable staffing levels. But bailiff staffing levels need to be immediately increased for the safety of all of the people who are in our courts and buildings.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Kitty K. Brennan". The signature is written in dark ink and is positioned above the printed name.

Hon. Kitty K. Brennan
Chief Judge, District 1
September 29, 2006

**The Clerk of Circuit Court's Response
To The Milwaukee County Audit
Of the Sheriff's Office Court Services Division**

to

Milwaukee County Board of Supervisors

Committee on Finance and Audit

Richard D. Nyklewicz, Jr., Chairman

Ryan P. McCue, Vice-Chairman

Elizabeth M. Coggs-Jones

Michael Mayo, Sr.

Willie Johnson, Jr.

Gerry P. Broderick

Peggy West

And

Milwaukee County Department of Audit

Jerome J. Heer, Director of Audits

Douglas C. Jenkins, Deputy Director of Audits

James D. Felde, CPA, CFE

**Prepared by
John Barrett
Clerk of Circuit Court
Director of Court Services
September 29, 2006**

John Barrett's Response

The Clerk of Circuit Court is responsible to provide the recordkeeping function and support services to the Circuit Courts of Milwaukee County. The Sheriff's office and the provision of bailiff services to the Courts have no direct relationship to our office, with one very large exception. The cost of providing those services is placed within the Clerk of Circuit Court budget. The judges have the authority to determine the level of security needed in each of their individual courtrooms. The Sheriff has the responsibility to provide the security for those courtrooms as determined by the judges. Therefore, my first and overriding response to this audit is that the cost of these services should be removed from the budget of the Clerk of Circuit Court and placed into either a non-departmental account or given back to the Sheriff's Department as a cost of their statutorily required services.

The audit's recommendation #16 suggests that the Sheriff's office work with the Clerk of Circuit Court to annually propose a service level agreement that defines those costs that are to be cross charged to the Court by the Sheriff's office. While we agree that a service level agreement should be in place establishing an agreed upon level of service which would reflect costs, the agreement should be between the Chief Judge, as the administrator of the First Judicial District, and the Sheriff's Department.

With that being said, I must address some of the issues presented by the audit that I have objections to. First, the 2006 budget for Combined Court Related Operations was approved and provided for 78 deputy sheriffs at a cost of \$8.3 million. At the same time, the Sheriff's Department approved budget said that they were to provide 70 deputy sheriffs for \$8.3 million. The audit suggests that we made a decision that significantly deviated from the adopted budget. Based on our approved budget, we did not. Further, the Sheriff's proposed budget for 2006 would have provided 97 deputy sheriffs for \$9.932 million. The cost per deputy is \$102,392 according to the audit. Twenty-seven deputies were removed from this proposed budget at a cost of \$1,551,247. That is a cost per deputy of \$57,454. That leaves 70 deputies at a cost of \$8,380,753. That cost is \$119,725 per deputy. That means we have a swing of \$62,271 per deputy within the same budget. A possible explanation to this discrepancy could be overtime and administrative overhead. While there is some overtime and administrative overhead built into the 2006 budgeted cross charge, this amount does not make up for the large discrepancy. The discrepancy is unreasonable.

Second, the audit disagrees with our objections with regard to a) fringe benefits, b) training costs, and c) fleet charges. Our opinion is that the handling of these costs is done in a manner which adversely affects the Clerk of Circuit Court costs while providing the Sheriff with a surplus. The audit then goes on to suggest other ways in which the Sheriff could increase that surplus to the tune of

\$585,000. This, to me, is absurd. Our complaint is one of fundamental fairness. We do not believe that the handling of these charges is done fairly and equitably.

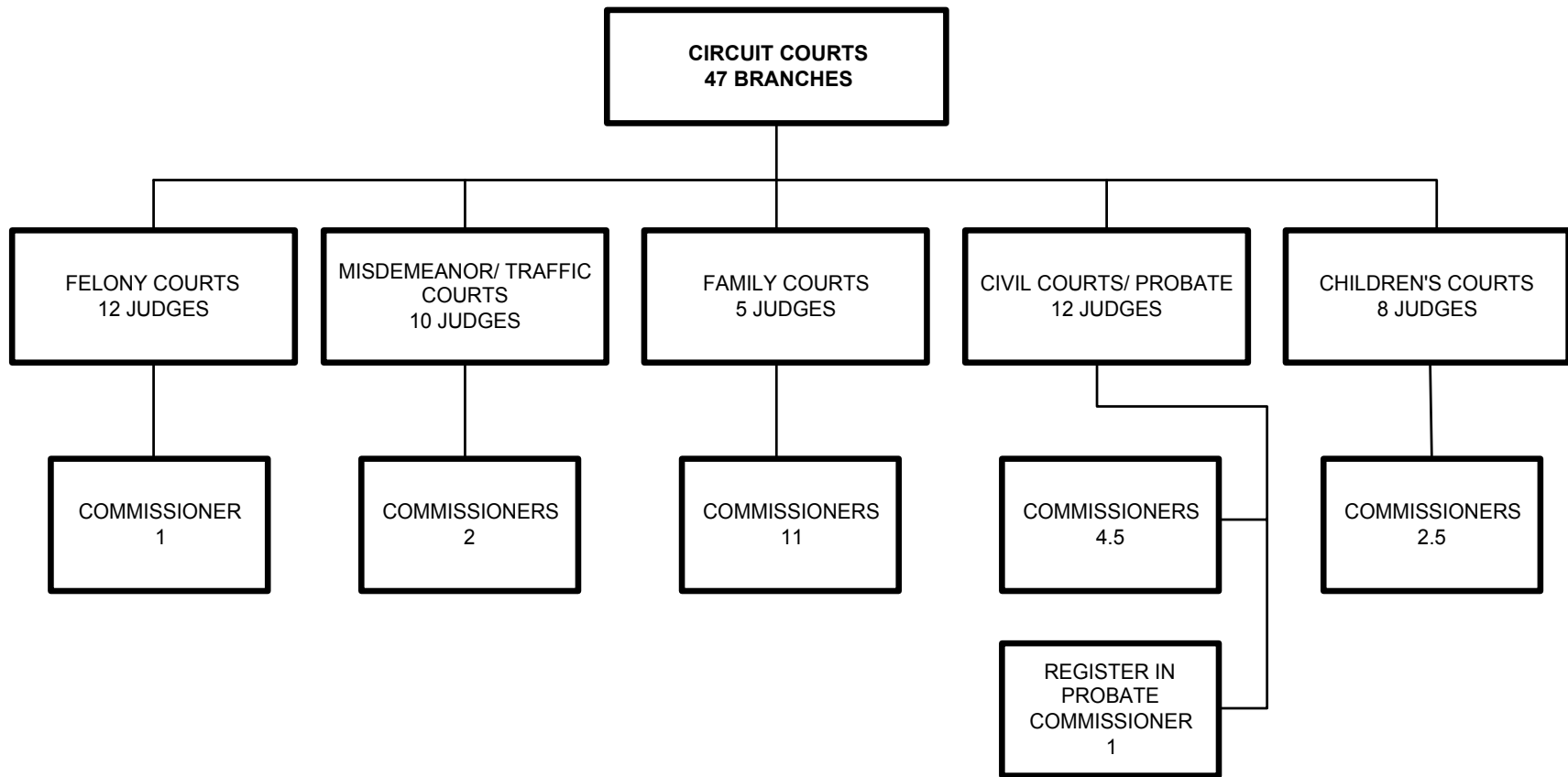
Conclusion

We believe that the level of bailiff services provided should not negatively impact the services we, in the Clerk of Court's office, provide to our constituency. We recommend the costs be bifurcated so as not to adversely affect the provision of either of these important services.

Respectfully Submitted,

A handwritten signature in dark ink that reads "John Barrett". The signature is written in a cursive, slightly slanted style.

John Barrett
Clerk of Circuit Court/
Director of Court Services
September 29, 2006



SOURCE: AUDITOR PREPARED USING COUNTY DATA

EXHIBIT 4

APPENDIX A



***Milwaukee County Circuit Court
Efficiency Study:
Bailiff Utilization Review***

July. 2006

**Project Staff:
John T. Matthias
John W. Douglas
Frank Keough**

**Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429
303-293-3063
FAX 303-296-9007
Federal ID # 52-0914250**

***Milwaukee County Circuit Court
Efficiency Study:
Bailiff Utilization Review***

Table of Contents

A. Introduction	1
B. Background	2
C. Findings.....	5
D. Discussion	5
E. Recommendations	7
F. Conclusions	10

**Annex A – Deputy Sheriff-Bailiff Staffing Recommendations
Milwaukee County Circuit Court**

Deputy Sheriff-Bailiff Utilization/Staffing Review
Milwaukee County Circuit Court

A. Introduction

1. During the period May 1-4, 2006, National Center for State Courts court security consultant, Francis P. Keough, conducted a review of deputy sheriff-bailiff staffing the Milwaukee County Circuit Court.
2. The evaluation was requested by the Milwaukee County Department of Audit and coordinated by the Department's Audit Manager Jere A Trudeau and Performance Evaluator III Edie Bland, both of whom accompanied Mr. Keough throughout the entire on-site evaluation period and were most professional, thorough, hospitable, and accommodating.
3. The evaluation consisted of interviews with key court and Milwaukee County Office of the Sheriff leaders and managers; building, courtroom, and prisoner/detainee holding area walk-throughs, and observation of security operations throughout the buildings involved. Those interviewed included the following:

Honorable Kitty K. Brennan, Chief Judge, First Judicial District
(Milwaukee)

Honorable John J. Dimotto, Presiding Judge, Family Division,
Milwaukee County Circuit Court

Honorable Thomas P. Donegan, Presiding Judge, Children's Division,
Milwaukee County Circuit Court

Honorable Daniel L. Konkol, Presiding Judge, Misdemeanor/Traffic
Division, Milwaukee County Circuit Court

Honorable John Barrett, Clerk of the Circuit Court and Director of
Court Services

Honorable David A. Clarke, Sheriff, Milwaukee County

Bruce M. Harvey, District Court Administrator

Frank J. Liska, Jr., Administrative Court Commissioner

Liz Finn Gorski, Children's Court Coordinator

Robert Donahoo, Chief Deputy District Attorney, Milwaukee County

Kevin Carr, Inspector, Office of the Sheriff, Milwaukee County

Chris J. Luedke, Captain, Special Operations Bureau, Office of the Sheriff

Deputy Sheriff Roy Felber, President, Milwaukee Deputy Sheriffs' Association

4. It should be noted that Captain Leudke and Sergeant James D. Cox of the Office of the Milwaukee Sheriff were especially helpful and most professional in the assistance provided during the on-site portion of this evaluation.

B. Background

1. The Milwaukee County Circuit Court (CC) is located in three main buildings: (a) The County Courthouse (CH) at 901 North Ninth Street; (b) the Safety Building (SB) at 821 West State Street; and (c) the Children's Court Center (CCC) at 10201 West Watertown Plank Road in Wauwatosa, Wisconsin. The CH and SB, located in downtown Milwaukee, are connected by walkways and basement corridors. In addition, there is a "high security" CC courtroom located between and interconnected to the CH and SB in the Criminal Justice Facility (CJF). The latter also houses the County Jail and the offices of the Sheriff and District Attorney.
2. Emergency response time within the combined CH and SB buildings is increased significantly by the sheer distance to be traversed between the most distant points—a factor which must be considered in determining bailiff staffing levels.
3. The CC has 47 judges* and 22 commissioners* (See paragraph four [4] below). They are organized as follows:
 - Felony Division 12 judges/1 commissioner
 - Misdemeanor/Traffic 10 judges/2 commissioners
 - Family 5 judges/11 commissioners
 - Civil 12 judges/5 commissioners
 - Children's 8 judges/3 commissioners

Total 69

*Does not include Chief Judge and Administrative Commissioner

4. “Reserve” judges are also assigned to assist in caseflow and to fill in for judges who are absent for various reasons. Thus, sixty (60) or more judicial officers may be presiding over active sessions/hearings on a given day. (Note: Chief Judge Brennan, Commissioner Jon W. Sanfilippo, and Administrative Court Commissioner Frank J. Liska, Jr. conduct sessions on a non-routine/as needed basis; some commissioners split their time between divisions.)
5. There are seventeen (17) prisoner/detainee holding areas—fourteen (14) in the three main buildings, and three (3) in the CCC. Prisoners/detainees appearing in the Intake Court are held in a CJF area which is accessed through the courtroom for that court.
6. Seventy-eight (78) deputy sheriff-bailiffs (DS-B) are authorized for the CC, along with four (4) supervisors and one (1) clerical assistant for a full time equivalent staff of eighty-three (83) assigned to the CC.
7. The 78 DS-B are responsible for securing all CC court and commissioner sessions in the three (3) main buildings and the CJF and the seventeen (17) prisoner/detainee holding areas. Two (2) of the three (3) supervisors assist as necessary.
8. No DS-Bs are assigned to ten (10) civil judicial sessions, and none to the juror assembly area where as many as 250 people report for jury duty on Mondays and Wednesdays. In the ten civil sessions, jury administration and control is a function of law clerks.
9. Prior to December 2005, there were 97 DSB positions authorized for the CC. In December 2005, the Milwaukee County Board of Supervisors adopted a Fiscal Year 2006 budget which eliminated nineteen (19) of those positions and thus led to the current staffing level of 78. While there was some discussion between the Board and the Office of the Sheriff, the staffing reduction appears to have been driven primarily by County budgetary concerns.
10. A review of pre-2006 budget requests and a 1992 DS-B staffing study request/recommends a minimum DS-B staffing level of 102-109. The number assigned in January 2005 was 102.
11. The number of judges and commissioners, as well as court sessions has increased over the past ten years while the DS-B staffing level has decreased. Also, court leaders state that there has been a substantial case load increase during that same time period; and that the incidence of serious crime in the area served by the CC has increased significantly as well.

12. Wisconsin statutes call for the Milwaukee County Sheriff to “provide the necessary deputy sheriffs as attending officers” under a general statutory provision applying to all county sheriffs which states that the sheriff of a county shall, “Attend upon the circuit court held in the sheriff’s county during its session, and at the request of the court, file with the clerk thereof a list of deputies for attendance on the court. The court may by special order authorize additional deputies to attend when the court is engaged in a trial of any person charged with a crime.”
13. Judges, commissioners, district attorney employees, and DS-B expressed significant concerns about the security posture of the CC, about their personal safety, and about the safety of those who work in or visit their court buildings. None of above believes DS-B staffing is adequate.
14. Judges frequently complain about (a) inadequate DS-B staffing which frequently causes courtroom delays, and (b) the need for DS-B to leave their assigned courtrooms in response to emergency situations elsewhere.
15. There are staffed entrance security screening stations (metal detectors and x-ray machines) at all open CC building public entrances. Staffing is provided by County (Department of Public Works Facilities Management) contracted building security guards. The Office of the Sheriff has no responsibility for this function, although DS-B respond to guards’ requests for assistance.
16. The court building threat environment is difficult to assess because of the lack of a comprehensive, i.e., complete and systematic, incident reporting system. The reporting available nonetheless indicates a less than benign environment—consistent with the dangers associated with most large metropolitan courts. A large number of weapons and contraband is stopped/confiscated at entrance security screening stations; however, the statistics available do not account for those detected items retained by owners who place them elsewhere before being allowed to enter.
17. Neither DS-B nor building security guards patrol the courthouse buildings. Also there is no closed circuit television monitoring of public gathering areas inside or outside buildings.

C. Findings

1. The deputy sheriff-bailiff (DS-B) staffing level in the Milwaukee County Circuit Court (CC) is inadequate, and, as such, places judges, employees, and the people who work in or visit court buildings at significant risk.
2. The 2005 County budgetary decision to reduce DS-B staffing by nineteen (19) positions did not sufficiently consider valid court security concerns.
3. Communications and coordination, with regard to DS-B staffing, between judicial and other court leaders/managers, the Office of the Sheriff, and DS-B union officials are strained to the point wherein solutions to serious and valid concerns and problems are not adequately addressed or resolved.

D. Discussion

1. The question of “How much is enough?” in court security is always difficult to answer. In the Milwaukee County Circuit Court buildings, the lack of a comprehensive court security incident reporting system, and incomplete entrance security weapons interdiction data increases the degree of difficulty in searching for an answer to adequate deputy sheriff-bailiff (DS-B) staffing levels.
2. The success of any security program especially that for court buildings and operations is measured by what does not happen. So, when success is achieved, i.e. “nothingness,” the natural tendency of those required to make difficult fiscal decisions is to reduce what they believe to be “unnecessary” security expenditures. Without specific, factual evidence to the contrary, one can thus view security spending as wasteful—at least somewhat so. Similarly, advertising dollars are often the first item considered when reducing corporate expenditures—applying a like notion that one cannot satisfactorily determine what portion of those dollars is wasted.
3. The notion of firemen sitting around a firehouse doing nothing all day might also appear wasteful, but, like deputy sheriff-bailiffs, one wants firemen to be available to adequately respond when one needs them.
4. One only has to look to the recent past to know that “nothingness” is not guaranteed in the clearly non-benign court environment. The March 2005 slayings in Atlanta’s Fulton County Courthouse and the June 2006 apparent sniper shooting of a judge through a Nevada court building window are the most glaring examples of an environment in which prisoner assaults and other misbehavior, medical emergencies, bomb threats, victim and witness intimidation, judicial threats, emotional litigant

outbursts, negative interactions between victim and defendant family members and friends, and a surprising-to-most incidence of weapons carried by members of the public are commonplace.

5. The fact that there are no serious incidents over a period of time leads to a sense of complacency which is an anathema to effective court security programs. When incidents do occur, it is common to hear words like, “We haven’t had any problems like this here.” or “We never expected anything like ‘this’ could happen.” Unfortunately, security operates in a “never know” world wherein deterrence is equally as important as prevention and control. The deterrence effect in court security programs cannot be overemphasized. In some states, it is axiomatic that for every incident which occurs, two others are prevented by the deterrence effect of a uniformed security presence. On a much grander scale, one would think that deterrence underlines the justification for the enormous expense and inconvenience of airport security programs. Has the latter prevented another 9/11? Who knows? What is known, however, is that doing what one can to deter or prevent is most important. The same can be said for court security programs. Indeed, Wisconsin statutory language is clear in this regard, “Court security officers are the first-line personnel source of security in the courtroom. Their presence serves as a deterrent to violent outbursts and provides the ability to respond to incidents that may arise.” In this respect, the open and obvious presence of uniformed officers is a solid working example of the basic court security principles designed to *deter* those intent on harm, *detect* those who have breached security, and *limit* the damage caused by the breach.
6. With special focus on judicial protection, jurors and prosecutors are often overlooked in the process of addressing courthouse security concerns. Juries and their deliberations require protection. Prosecutors can also be the focus of those considering or intending harm as a result of court decisions which do not go their way. There are 120 assistant district attorney—prosecutors who work in CC buildings, for example. Indeed, prosecutors are specifically mentioned in Wisconsin statutory language, “In counties having a population of 300,000 or more, (the sheriff shall) assign one deputy, to be mutually agreed upon by the sheriff and the district attorney, to the office of the district attorney.”
7. It is most important to understand that DS-B are engaged in a security/protection function. While they may be sworn law enforcement officers, their purpose is not just to enforce laws, but to keep people safe and secure. Their role is for the most part a passive one, but passivity does not translate to a lack of necessity.

8. Judges are visible and public focal points for better or worse and must be afforded a level of protection, especially when in courtrooms and court buildings. They act and speak for “The Court,” and represent the judicial branch of government. They sit at elevated levels in courtrooms and are otherwise readily identifiable by the robes they wear. They are the final arbiters of disputes. They deprive people of their freedom, decide child custody matters, make decisions which effect financial resources, and rule in favor of one side over another. Assaults and threats against judges must therefore be viewed as threats against the judicial system.
9. No judge should preside over a court session without security protection. While he or she may preside over civil matters, each is likely to have a judicial or attorney history wherein he or she was the focus of anger on the parts of litigants, criminals, or even their own clients. Furthermore, those wanting to make a “statement” or sitting on the lunatic fringe of society may indiscriminately target a sitting judge just because he or she serves in that capacity. Furthermore, civil sessions can be quite dangerous, e.g., in landlord/tenant disputes leading to evictions, zoning decisions, and cases wherein significant personal or financial harm is alleged.
10. The use of law clerks to safeguard and protect jurors and jury deliberations is convenient, but does not afford jurors adequate protection in the performance of their critically important court function. As the statutory language quote above indicates, a uniformed presence deters intimidation, protects confidentiality, and gives jurors a sense of security and support for often troubling decisions.
11. Court security, as is the case with any security program, should be considered in a comprehensive way; i.e., it entails a concentric circle approach with the largest circle at the building perimeter and with the circles becoming smaller and smaller as they approach the smallest ones of the courtroom and judicial chambers. Each circle relates and interacts with the other. If an untoward event is not deterred or prevented at the outside circle, it can become more difficult to deter or prevent at the increasingly diminishing circles. Thus, one should not consider DS-B staffing in isolation. Entrance security screening, the use of closed circuit television systems, duress alarms, window barriers at administrative transaction counters and the like form parts of a comprehensive approach to safeguarding people who work in or visit court buildings.

E. Recommendations

1. County Circuit Court should have a *minimum* of 114 deputy sheriff-bailiffs (DS-B) assigned, based on the criteria in Annex A to this report. (**Note:** the word “minimum” is emphasized since there are situations

requiring more than the minimum; e.g., high visibility trials, intelligence indicating unusual threats to victims, litigants, attorneys, prosecutors, witnesses, etc.)

2. The fiscal impact of increasing the DS-B staffing level by a minimum of thirty-six (36) positions is understood, and the difficulties in doing so are not underestimated. In this light, the following managerial suggestions to facilitate the increase are offered for consideration:
 - a. In keeping with the concentric circle, comprehensive approach to court security, establish a non-sworn and unarmed deputy sheriff position, the duties of which would include the operation of entrance security screening stations; jury assembly area monitoring; non-jury judicial civil sessions; patrol of court building administrative areas; monitoring, using closed circuit television, prisoner/detainee holding areas; assisting in building evacuation procedures; serving as security officers in non-threatening small claims sessions, etc. Individuals serving in these functions would be paid at a lesser rate than DS-B and be given primary consideration for advancement to sworn status as vacancies occur.
 - b. Establish written policies and procedures to ensure DS-B continue to be assigned by assessed risk; appoint one DS-B as divisional manager to assign and reassign bailiffs intra-divisionally based on daily requirements and situations. The captain of the Special Operations Bureau would oversee divisional managers and requirements and make inter-divisional reassignments to meet unusual situations and requirements. With this in mind, the Special Operations Bureau would review DS-B assignments daily to ensure those court sessions/hearings considered of the highest risk are adequately covered in what might be referred to as a “distribution of shortages” mode. It may be that some sessions routinely assigned two or more bailiffs can function well with just one bailiff at certain times with the others assigned to more volatile sessions or hearings, even if done on a half-day basis. (Note: an impression noted during the on-site evaluation was that the number DS-B assigned to sessions is done in a habitual manner without sufficient regard to the risks present on a given day.) (Also, see Annex A, paragraph B 1.)
 - c. Rename the current “Safety Committee” the “Court Security Committee,” give its deliberations special emphasis, and ensure the committee includes, at a minimum, a judge designated by the Chief Judge; a high-level representative of the County Sheriff; a

representative of the Clerk of the Circuit Court; a leader/manager in the CCC Wauwatosa building; a County government official; a building facilities manager; and a deputy sheriff union official. The committee would continue to meet monthly to discuss security issues, including DS-B staffing, and to express mutual concerns with a view toward resolution. Consideration should also be given to the establishment of an exclusive executive level security committee consisting of the Chief Judge, the Clerk of Circuit Court, and the County Sheriff to attempt to resolve security issues that have reached an impasse status in the “Court Security Committee.” (Note: the statutory language reviewed in this evaluation indicates that “local committees equipped to address local issues of security policy are a critical element in the overall success of those efforts. Further, the creation of a committee in each county will serve one of the overall goals of these standards—to heighten awareness of and sensitivity to security issues so that the judicial system’s response to them is proactive, geared to prevention, not merely reactive, responding to violent, perhaps tragic incidents.”)

- d. The Chief Judge’s office should ensure that an up-to-date judicial/commissioner schedule, including planned vacation and professional time, is provided on a monthly basis to the Office of the Sheriff so that DS-B assignments can be made more efficiently and effectively.
- e. The Office of the Sheriff should establish a comprehensive incident reporting system as an analytical basis for determining security and staffing priorities. That system should also include statistical information on the number of weapons, and other contraband, interdicted at entrance security stations, including those weapons whose owners are permitted to retain them outside of the court buildings.
- f. Install closed circuit television monitoring of public gathering places in the CC buildings, especially in the most volatile areas such as the Family Court commissioner sessions/hearings on the seventh floor of the County Courthouse building.
- g. Establish prisoner movement procedures to address the concerns expressed by judges that (1) prisoners are not brought to courtrooms on a timely basis; and (2) that DS-B leave courtrooms without adequate security coverage to obtain prisoners for their assigned courtrooms. To that end, consideration should be given to the establishment of a team to move prisoners to and from the

Criminal Justice Facility to courtrooms on a “just in time” basis as cases are called.

- h. Conduct half-day judicial sessions as directed by the Office of the Chief Judge, especially on the civil side, which would allow DS-B to be assigned to certain sessions in the morning and others in the afternoon (afternoon half-day sessions can be especially effective regarding bailiff utilization because courts are typically busier in the morning). In this light, preliminary hearing sessions could be held on alternate days if caseloads permit.
- i. Stagger lunch periods for DS-B monitoring prisoners in holding areas to maintain coverage without increasing overtime accumulation.

F. Conclusions

- 1. Court buildings present significant risks to those who work in or visit them. There are very few people who wake up each morning and, with nothing better to do, opt to visit a court building. With a full gamut of emotions involved and dispute decisions made in favor of one over another, untoward incidents can and do occur without warning, in unexpected places, and at unanticipated times.
- 2. It is most difficult to justify security program expenditures, especially when very few incidents are known to take place, or those that do take place achieve little or no notoriety. However, the most important question to ask is: How much does one value the safety, security and well being of those who work in or visit our courts? It is virtually impossible to put a price tag on this value.
- 3. We do know that a prudent security program is in the best interests of all court systems. One understands that protection against all that might happen in a court building is not possible. However, one cannot overlook the deterrence and preventative effects of a good security program.
- 4. With regard to the deputy sheriff-bailiff staffing levels recommended in this report, it is imperative that one subscribes to the daily intra/inter-divisional management of authorized deputy sheriff-bailiffs. Managers must understand and accept that there will unlikely be enough to satisfy everyone, and those shortages will be the rule rather than the exception. Accordingly, one then distributes shortages according to assessed risk—a risk that is determined based on experience, knowledge of the cases being heard, and a comprehensive incident reporting system which, when appropriately analyzed, allows for more informed risk assessments.

5. There is no question that the current deputy sheriff-bailiff staffing level in the Milwaukee County Circuit Court is inadequate, and, to the writer of this report, the level is based on budgetary considerations without sufficient regard to the security and safety of the court and those who work in or visit it.
6. The writer believes that at the current staffing levels, it becomes a matter of not *if* a serious incident will occur, but only *when*, and that an immediate increase in bailiff staffing is therefore an absolute necessity.

Annex A
Deputy Sheriff-Bailiff Staffing Recommendations
Milwaukee County Circuit Court

A. Methodology (General)

1. In determining bailiff functional staffing in any court, the main elements commonly considered are:

- Sitting judges
- Session types, e.g., criminal, civil, family, juvenile
- Juries
- Sitting commissioners/magistrates
- Prisoner/detainee holding areas
- Jury pools/assembly areas
- Emergency response actions

2. Using only the above elements, the minimum deputy sheriff-bailiff staffing level for the Milwaukee County Circuit Court is 119 based on the following:

• Forty-eight (47) judges @two (2) bailiffs	94
• Nine (9) holding areas @ one (1) bailiff	9
• Fifteen commissioners @ one (1) bailiff	15
• One (1) jury assembly area @ one (1) bailiff	1
<u>Total</u>	119

3. A two bailiff per judge ratio takes into consideration that some sessions require three (3) bailiffs; others just one (1); however, an underlying factor is that every sitting judge be assigned at least one bailiff.
4. Bailiff staffing for holding areas is based on the number of holding areas with two or more cells, and the one used strictly for females. Thus, nine (9) of the seventeen (17) holding areas require one bailiff each. Prisoners/detainees in the remaining eight (8) can be checked visually and directly by bailiffs assigned to the courtrooms off which those holding areas are immediately located. Typically, bailiffs conduct those checks every fifteen (15) minutes. The assumption is made that at least two bailiffs are assigned to the courts involved.

5. While there are twenty-two (22) commissioners, some either do not sit routinely or do not preside over types of proceedings which require a full-time bailiff presence. Based on available scheduling documents, an average of fifteen (15) commissioner sessions was used to determine bailiff requirements.
6. Few, if any, jurisdictions have the luxury of specific emergency response teams and must, as a practical matter, use bailiffs assigned to various sessions etc. in emergency roles. That role is nonetheless a staffing level consideration. Thus, in a criminal courtroom with two or more bailiffs assigned, one bailiff can respond to emergency situations elsewhere without leaving a courtroom without bailiff coverage; or in non-jury civil sessions, it would be possible for the unitary bailiff assigned to leave.
7. Prisoner/holding areas are of particular concern since the risks of escape, prisoner assaults, and suicide attempts are always of concern. Prisoner suicide attempts in court holding areas are not unusual and can be affected within a few minutes in the absence of close and continuous monitoring. Closed circuit television monitoring is not as effective as direct bailiff monitoring and should be considered only as an aid.
8. Vacation and other time off are assumed relatively equal with regard to requirements and are not factored in the above numbers.

B. Methodology Applied to Milwaukee County Circuit Court.

1. The variety of cases heard in the Milwaukee County Circuit Court (CC) point to a need for maximum flexibility in bailiff assignments, which can be best achieved by an economy of force factor with positions determined according to the CC's divisional organization. Using this method, the total number of deputy sheriff-bailiff (DS-B) positions are distributed by court division; individual DS-B are permanently assigned to a court division, and, within the division, are then distributed daily based on assessed risk in what can be referred to as a "distribution of shortages" mode. Operating in that mode, managers decide at the beginning and throughout the day what divisional sessions/hearings can best afford to be short-staffed based on assessed risk and assign/reassign DS-B around accordingly. This methodology can be applied inter-divisionally as well. Thus, the following are recommended minimum divisional staff levels:

Felony Division

(Includes Preliminary Hearing Court (PHC))

Criteria

- Three (3) bailiffs per judicial session, one each for judge, jury, and prisoner—commonly accepted minimum staffing for these type sessions.
- One (1) bailiff per holding area. Prisoner assaults and disruptions generally constitute a substantial portion of court incidents. Prisoner suicide attempts are not unusual and can be consummated in less than five minutes without intervention.
- Five (5) of the eleven (11) holding areas in the Felony Division have two or more cells and thus each require the assignment of one bailiff each. The remaining six (6) are located just beyond courtroom exit doors and, thus, can be monitored by one of the bailiffs assigned to the courtroom on a typical fifteen (15) minute interval when prisoners are present.
- The minimum number can be reduced by one (1) in non-jury sessions; and one (1) if prisoners are placed in restraints while in courtrooms—an unusual practice when prisoners are before juries). Obviously, no DS-B would be required in an unoccupied holding area.
- The PHC requires three (3) bailiffs at all times, one each for the commissioner, prisoner, and prisoner movements to and from the prisoner holding area or Criminal Justice Facility.
- Risk considerations include prisoner disruptions; audience members on opposite sides of those involved in cases; threats to prosecutors and defense attorneys; jury, witness and victim intimidation; barrier separations in several courtrooms which, while generally beneficial, delay DS-B response to audience problems and can impede the flow of assistance to and from courtroom proper; and verdict and sentencing times.

Recommended DS-B staffing/authorized position level—thirty-eight (38)

- Twelve (12) judges @ 2.5 30
- Five (5) holding areas @ one (1) 5
- Preliminary Hearing Court 3

Misdemeanor/Traffic Division

(Includes Intake Court)

Criteria

- Two (2) bailiffs per non-jury judicial session, one (1) each for judge and prisoner; and three (3) when a jury is added; one (1) bailiff for traffic/out of custody commissioner hearings.
- One (1) bailiff for the female holding area. Two (2) other holding areas can be monitored by bailiffs assigned to associated courtrooms.
- Three (3) bailiffs for Intake Court (IC), one (1) each for commissioner, prisoner, and moving prisoners to and from Criminal Justice Facility (CJF) holding area and courtroom; IC active seven days per week; prisoners not restrained when in the courtroom (not a recommended practice). IC frequently serves as the point of introduction to the court system for a large number of prisoners/detainees; emotions run high; victims and relatives, with incidents fresh in their minds are often present in the audience. It is not unusual for many custodies to remain under the influence of illegal substances. In most states, this type of court, often called an arraignment session, is considered among the most volatile; bailiffs are continuously moving about, into and out of the courtroom area—moving court documents, going to the CJF holding area just outside the courtroom to move prisoners back and forth, and to ensure prosecutors and defense attorneys are present for cases called.
- Non-intake, misdemeanor and traffic court cases generally carry less risk than those in felony and intake courts. Traffic court sessions can, for the most part, be served by just one (1) bailiff. Two bailiffs would suffice in criminal sessions without juries if prisoners were placed in restraints in the courtroom.

Recommended DS-B staffing/authorized position level--twenty-five (25)

- | | |
|----------------------------------|----|
| • Ten (10) judges @ two (2) | 20 |
| • Intake Court @ three (3) | 3 |
| • One (1) commissioner @ one (1) | 1 |
| • One (1) holding area @ one (1) | 1 |

Family Division

Criteria

- One (1) bailiff per judicial session without litigants present; two (2) with litigants present.
- One (1) bailiff per commissioner session/hearing. While there are eleven (11) commissioners in the Family Division, the average number hearing cases at any one time varies. Hence, the recommended divisional staffing level shown below—sixteen (16)—takes into account that some judges may require just one bailiff, and that not all commissioners conduct hearings all of the time. Daily management of the sixteen (16) bailiffs assigned would provide the required flexibility.
- Risks in Family Division are generally considered higher than in other courts due to emotional issues surrounding divorce such as child custody, property, and financial support/alimony decisions. Judges and attorneys on both sides are at risk. While security incident rates are likely to be statistically higher in criminal courts, catastrophic ones are more likely in family courts.
- The Family Division area on the seventh floor of the County Courthouse building is considered the most dangerous and risky single area in the Circuit Court buildings and is significantly understaffed with bailiffs—only three (3) at present for as many as ten simultaneously active commissioner hearings. The physical plant there adds to the danger due to constricted public space which places litigants in close proximity and allows emotions to percolate to the boiling point.

Recommended DS-B staffing/authorized position level—sixteen (16)

- Five (5) judges @ 1.5 8
- Eleven (11) commissioners @ 0.70 8

Civil Division

Criteria

- One (1) bailiff per judicial session for judge and jury.
- Civil sessions generally do not present significant security risks. However, judges are visible representatives of the judicial branch of government; and juror and jury deliberations require protection, however limited.
- In most jurisdictions, civil matters before the court often involve a substantial amount of “down time” as attorneys attempt to settle matters between themselves. As such, a solitary bailiff is sometimes able to cover two courtrooms in close proximity, especially in non-jury cases.
- Two (2) probate judicial sessions in this division can be emotionally charged and require more than passing attention.
- A bailiff presence is recommended for small claims sessions/hearings. Small claims cases are not without risk since they frequently involve emotional neighbor or family disputes which could not be settled privately. In most cases, the presence of a uniformed bailiff is sufficient deterrence.
- Bailiffs assigned to small claims and probate commissioner hearings can cover two hearings room simultaneously by moving in and out of each as deterrence and opting to remain in those which appear to represent unusual risks.
- Four (4) small claims commissioners, and one (1) probate commissioner hear cases most of the day. A sixth is assigned for half a day.

Recommended DS-B staffing/authorized position level—twelve (12)

- Twelve (12) judges @ 0.75 9
- 5.5 commissioners @ 0.5 3

Children's Division

Criteria

- Two (2) bailiffs per judicial session; one (1) per commissioner hearing; one per holding area.
- Juvenile delinquency, children in need of services, and parental rights cases carry risks on a par with family and regular criminal courts and are often distinguished by *laissez-faire* attitudes on the part of parents, and, even more on the part of juveniles themselves. Juvenile delinquents are often uncaring about what may happen to them and harbor high levels of anger at the “system.”
- Limitations on public access to courtrooms and hearing rooms involving juveniles and children lead to large and volatile gatherings in public areas of the building, often with family members on both sides of the matter before the court present in close proximity to one another. Bailiffs must be available and prepared to break up fights and other disturbances in these areas.
- Juveniles detained in detention cells especially require sight and sound monitoring, particularly since the suicide rate among young people is alarmingly high outside of the restrictive court environment.
- The location of the Children's Division at a considerable distance from the downtown Milwaukee court buildings does not allow for the immediate bailiff augmentation available downtown and must be taken into account when determining bailiff staffing levels.

Recommended DS-B staffing/authorization level—twenty-one (21)

- | | |
|-------------------------------|----|
| • Eight (8) judges @ two (2) | 16 |
| • 2.5 commissioners @ 0.75 | 2 |
| • Three (3) holding areas @ 1 | 3 |

Other

- Jury Assembly area @ 0.5
- Prisoner movement/high risk team @ 1.5

Total 2

Recommended Staffing/Authorized Position Level
Using Divisional Methodology as Applied to
Milwaukee County Circuit Court

• Felony Division	38
• Misdemeanor/Traffic Division	25
• Family Division	16
• Civil Division	12
• Children's Division	21
• Other	2
<u>Total</u>	114